

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P § Case No. **19-34054-SGJ11**
Charitable DAF Fund, L.P et al

Appellant	§	
vs.	§	21-03067
Highland Capital Management, L.P	§	
Appellee	§	3:23-CV-01503-B

[167] Order granting Defendant Highland Capital Management, L.P.'s Renewed motion to dismiss
adversary proceeding (related document # [122](#)) Entered on 6/25/2023.

Volume 15

APPELLANT RECORD

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and CLO Holdco, Ltd.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§ Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ Case No. 19-34054-sgj11
Debtor.	§
CHARITABLE DAF FUND, L.P. AND CLO	§
HOLDCO, LTD., DIRECTLY AND DERIVATIVELY	§
Plaintiffs,	§ Adversary Proceeding No.
vs.	§ 21-03067-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
HIGHLAND HCF ADVISOR, LTD., AND	§
HIGHLAND CLO FUNDING LTD., NOMINALLY	§
Defendant.	§

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**APPELLANTS' SECOND AMENDED STATEMENT OF ISSUES
AND DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy
Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. ("Appellants") hereby designate
the following items to be included in the record and identify the following issues with respect to

their appeal of the Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 25, 2023.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

- Whether the Bankruptcy Court had jurisdiction to rule on Highland Capital Management L.P.'s Renewed Motion to Dismiss Complaint
- Whether the Renewed Motion to Dismiss Complaint was improperly granted

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

*VOL. 1
000001*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 168].

000042

2. The judgment, order, or decree appealed from: Memorandum Opinion and Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] [Doc. 167].

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3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 21-03067-sgj.

*VOL. 2
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No.	Date Filed	Docket No.	Description/Document Text
1	9/29/21	1	(36 pgs; 3 docs) Adversary case 21-03067. ORDER REFERRING CASE NUMBER 21-CV-0842-B from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division. Complaint by Charitable DAF Fund, LP, CLO Holdco, Ltd. against Highland Capital Management, LP, Highland HCF Advisor Ltd., Highland CLO Funding, Ltd. Fee Amount \$350 (Attachments: # 1 Original Complaint # 2 Docket Sheet from 3:20-cv-0842-B) Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, M.)
2	9/29/21	2	(1 pg) Supplemental Document (cover sheet) by CLO Holdco Ltd., Charitable DAF Fund (RE: related document(s)1 Adversary case 21-03067) [ORIGINALLY FILED IN 21-CV-0842 AS #2 ON 04/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)

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Vol. 2	3	9/29/21	6	(93 pgs; 6 docs) MOTION for Leave to File First Amended Complaint filed by CLO Holdco Ltd., Charitable DAF Fund LP (Attachments: # 1 Exh 1_First Amended Complaint # 2 Exh 2_Motion for Authorization to Retain James Seery # 3 Exh 3_Order Approving Retention of James Seery # 4 Exh 4_Order Approving Settlement # 5 Proposed Order) (Bridges, Jonathan) (Entered: 04/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #6 ON 04/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
000139	4	9/29/21	22	(7 pgs; 2 docs) MOTION for an Order to Enforce the Order of Reference filed by Highland Capital Management LP. (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/20/2021 (mjr). (Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #22 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
000232	5	9/29/21	23	(31 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference. (Annable, Zachery) Modified text on 5/20/2021 (mjr). (Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #23 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
000239	6	9/29/21	24	(926 pgs; 29 docs) Appendix in Support filed by Highland Capital Management LP re: 23 Brief/Memorandum in Support. (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix 10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13 # 14 Appendix 14 # 15 Appendix 15 # 16 Appendix 16 # 17 Appendix 17 # 18 Appendix 18 # 19 Appendix 19 # 20 Appendix 20 # 21 Appendix 21 # 22 Appendix 22 # 23 Appendix 23 # 24 Appendix 24 # 25 Appendix 25 # 26 Appendix 26 # 27 Appendix 27 # 28 Appendix 28) (Annable, Zachery) Modified linkage and text on 5/20/2021 (mjr). (Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #24 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
000270	Thru Vol. 6			
Vol. 7	7	9/29/21	26	(7 pgs; 2 docs) MOTION to Dismiss Complaint filed by Highland Capital Management LP (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/28/2021 (jmg). (Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #26 ON 05/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001196				

VOL 7 001203	8	9/29/21	28	(508 pgs; 14 docs) Appendix in Support filed by Highland Capital Management LP (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix 10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13) (Annable, Zachery) (Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #28 ON 05/27/2021 IN U.S. DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
VOL 9 001711	9	9/29/21	33	(1 pg) Amended Civil Cover Sheet by CLO Holdco Ltd, Charitable DAF Fund LP. Amendment to 2 Supplemental Document. (Sbaiti, Mazin) Modified text on 6/23/2021 (mjr). (Entered: 06/22/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #33 ON 06/22/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001712	10	9/29/21	36	(26 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 22 MOTION for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #36 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001738	11	9/29/21	37	(22 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 36 Response/Objection Response to Motion for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #37 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001760	12	9/29/21	38	(45 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #38 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001805	13	9/29/21	39	(88 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 38 Response/Objection to Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #39 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001893	14	9/29/21	42	(12 pgs) REPLY filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #42 ON 07/13/2021 IN U.S.

			DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
<i>Vol. 9</i> <i>001905</i> <i>thru Vol.</i> <i>Vol. 14.</i>	15	9/29/21	43 (852 pgs) Appendix in Support filed by Highland Capital Management LP re: 42 Reply. (Annable, Zachery) Modified text on 7/14/2021 (mjr). (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842AS #43 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
<i>002757</i>	16	9/29/21	45 (21 pgs) REPLY filed by Highland Capital Management LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #44 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
<i>002778</i>	17	9/29/21	57 (7 pgs; 2 docs) MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. filed by Highland CLO Funding Ltd. (Attachments: # 1 Proposed Order) Attorney Paul R Bessette added to party Highland CLO Funding Ltd (pty:dft) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #57 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
<i>002785</i>	18	9/29/23	58 (12 pgs) Brief/Memorandum in Support filed by Highland CLO Funding Ltd. re 57 MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #58 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
<i>002797</i>	19	9/29/23	59 (80 pgs; 5 docs) Appendix in Support filed by Highland CLO Funding Ltd re 58 Brief/Memorandum in Support of Motion (Attachments: # 1 Exhibit(s) A - Jackson v Dear # 2 Exhibit(s) B - Prudential Assurance v. Newman # 3 Exhibit(s) C - Harbourvest Settlement Agreement # 4 Exhibit(s) D - Boleat Declaration) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #59 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
<i>002877</i>	20	9/29/21	64 (1 pg) ORDER OF REFERENCE: Pursuant to 28 U.S.C. § 157 and this District's Miscellaneous Order No. 33, this case is hereby REFERRED to Judge Stacey G. C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, to be adjudicated as a matter related to the consolidated Chapter 11 Bankruptcy of Highland Capital Management, L.P., Chapter 11 Case No.19-34054. (Ordered by Judge Jane J. Boyle

Vol. 14 002878			on 9/20/2021) (svc) (Entered: 09/20/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #64 ON 09/20/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	21	10/19/21	66 (5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP, 47 Motion to strike document filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 55 Motion to abate filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) Hearing to be held on 11/23/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 26 and for 47 and for 55, (Annable, Zachery)
002883 thru Vol. 16	22	11/22/21	71 (509 pgs; 2 docs) Witness and Exhibit List for Hearing on November 23, 2021 filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding). (Attachments: # 1 Exhibits 1-13) (Hayward, Melissa)
	23	11/22/21	72 (2 pgs) Witness List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding, 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint), 69 Motion to abate Plaintiffs' Amended Motion to Stay All Proceedings (related document(s) 55 Motion to abate (related document(s) 1Complaint))). (Sbaiti, Mazin)
003392 003394	24	11/22/21	73 (189 pgs; 4 docs) Exhibit List for November 23, 2021 hearing filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint)). (Attachments: # 1 Exhibit 1_Defendant's Memorandum of Law in Support of Motion for Reconsideration # 2 Exhibit 2_Highland Memorandum in Support of Motion to Dismiss # 3 Exhibit 3_Order (I) Confirming Fifth Amended Plan of Reorganization of Highland) (Sbaiti, Mazin)
	25	12/7/21	80 (2 pgs) Order granting Highland CLO Funding, Ltd.'s motion to dismiss adversary as a party with prejudice (related document 57) Entered on 12/7/2021. (Okafor, Marcey) Modified text on 3/11/2022 (Okafor, Marcey).
003583 003585	26	3/11/22	99 (26 pgs) Memorandum of Opinion and order granting motion to dismiss the adversary proceeding (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Entered on 3/11/2022 (Okafor, Marcey)
	27	3/11/22	100 (26 pgs) Order granting motion to dismiss adversary proceeding with prejudice (related document #26) Entered on 3/11/2022. (Okafor, Marcey)

<i>Vol. 18</i>	28	3/21/22	104	(29 pgs) Notice of appeal. Fee Amount \$298 filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 100 Order on motion to dismiss adversary proceeding). Appellant Designation due by 04/4/2022. (Sbaiti, Mazin)
<i>00363</i>	29	5/26/22	120	(177 pgs; 2 docs) Support/supplemental document <i>Motion to Supplement Appellate Record</i> filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 111 Appellant designation). (Attachments: # 1 Amended Transcript of January 14, 2021 Hearing) (Sbaiti, Mazin)
<i>00366</i>	30	6/9/22	121	(1 pg) DISTRICT COURT Order: Case 3:22-00695-B is hereby transferred to the docket of the Honorable Judge Jane J. Boyle for consolidation with The Charitable DAF Fund LP, et al. v. Highland Capital Management LP, Case No. 3:21-cv-3129-N. Judge Karen Gren Scholer no longer assigned to case.(RE: related document(s) 86 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 104 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 6/9/2022 (Whitaker, Sheniqua) (Entered: 06/10/2022)
<i>003843</i>	31	10/24/22	122	(7 pgs) Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (Annable, Zachery)
<i>003844</i>	32	10/14/22	123	(31 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Annable, Zachery)
<i>Vol. 19</i>	33	10/14/22	124	(513 pgs; 15 docs) Support/supplemental document (<i>Appendix in Support of Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
<i>003882</i>	34	10/27/22	126	(5 pgs) Notice of hearing (<i>Notice of Hearing and Briefing Schedule on Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 12/8/2022 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 122. (Annable, Zachery)
<i>Thru Vol 20</i>				
<i>Vol. 21</i>				
<i>004395</i>				

<i>Vol. 21</i> <i>004400</i>	35	11/18/22	128	(10 pgs) Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (Sbaiti, Mazin)
<i>004410</i>	36	11/18/22	129	(32 pgs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
<i>004412</i> <i>Thru vol. 22</i>	37	11/18/22	130	(254 pgs; 2 docs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Attachments: # 1 Appendix) (Sbaiti, Mazin)
<i>Vol. 22</i> <i>004696</i>	38	9/2/22	131	(21 pgs) DISTRICT COURT MEMORANDUM OPINION AND ORDER: The Court REVERSES and REMANDS the bankruptcy court's Motion to Dismiss Order and AFFIRMS the bankruptcy courts Motion to Stay Order. re: appeal on Civil Action number: Case 3:22-00695-B consolidated with 3:21-CV-3129-B, (RE: related document(s) 81 Order on motion to abate, 100 Order on motion to dismiss adversary proceeding). Entered on 9/2/2022 (Whitaker, Sheniqua) (Entered: 11/29/2022)
<i>004717</i>	39	12/2/22	133	(15 pgs) Reply to (related document(s): 129 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 130 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)
<i>004732</i>	40	12/7/22	135	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 1/25/2023 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for 122, (Annable, Zachery)
<i>004737</i>	41	12/7/22	136	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Status Conference to be held on 1/25/2023 at 01:30 PM at https://us-courts.webex.com/meet/jerniga . (Annable, Zachery).
<i>004742</i>	42	12/9/22	138	(3 pgs) Response opposed to (related document(s): 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)

Vol. 22 004745	43	12/9/22	139	(25 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Annable, Zachery)
Vol. 23 004770	44	12/9/22	140	(280 pgs; 8 docs) Support/supplemental document (<i>Appendix in Support of Highland Capital Management, L.P.'s Response to Renewed Motion to Withdraw the Reference</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 24 005050	45	12/16/22	144	(6 pgs) Reply to (related document(s): 138 Response filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
005056 Thru Vol. 25.	46	1/23/23	145	(514 pgs; 15 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
Vol. 26 005570	47	1/23/23	146	(280 pgs; 8 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 27 005850	48	1/23/23	147	(221 pgs; 7 docs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1_Excerpts from July 14, 2020 Hearing Transcript # 2 Exhibit 2_HCLOF Members Agreement Relating to the Company # 3 Exhibit 3_HarbourVest Settlement Agreement # 4 Exhibit 4_Order Approving Debtor's Settlement with HarbourVest # 5 Exhibit 5_HCLOF Offering # 6 Exhibit 6 Amended and Restated Investment Advisory Agreement) (Sbaiti, Mazin)
006071	49	1/23/23	148	(3 pgs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Phillips, Louis)
Vol. 28 006074	50	1/25/23	150	(56 pgs; 2 docs) Amended Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 147 List (witness/exhibit/generic), 149 List (witness/exhibit/generic)). (Attachments: # 1 Exh 7_Testimony of Mark Patrick at June 8, 2021 hearing) (Sbaiti, Mazin)

<i>VOL. 28 006130</i>	51	1/25/23	152	(3 pgs) Notice of Appearance and Request for Notice by Louis M. Phillips filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Phillips, Louis)
<i>006133 Thru Vol. 31</i>	52	1/25/23	154	(1 pg) Court admitted exhibits date of hearing January 25, 2023 (RE: related document(s) 128 Motion for withdrawal of reference, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (COURT ADMITTED DEFENDANT'S EXHIBITS #1, #2, #3, #4, #5 & #6 OFFERED BY ATTY GREG DEMO). (Edmond, Michael) (Entered: 01/27/2023)
<i>VOL. 32 006925</i>	53	2/6/23	158	Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023 (Okafor, Marcey)
<i>006942</i>	54	2/6/23	161	(18 pgs) DISTRICT COURT Notice of transmission of report and recommendation in re: renewed motion to withdraw reference. Civil Case # 3:22-cv-02802-S. (RE: related document(s) 158 Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023) (Whitaker, Sheniqua)
<i>006960</i>	55	4/3/23	165	(1 pg) DISTRICT COURT ORDER: The Court GRANTS the 11 Joint Motion to Transfer Proceeding and Consolidate Before Original Court and the above-numbered case (3:22-cv-02802-S) is transferred to the docket of the Honorable Judge Jane Boyle: Civil case 3:21-cv-00842-B (order referring case). (RE: related document(s) 1 Complaint filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 143 Notice of transmission of motion to withdraw reference). Entered on 4/3/2023 (Whitaker, Sheniqua) Modified on 4/10/2023 (Whitaker, Sheniqua). (Entered: 04/10/2023)

TRANSCRIPTS

<i>006961</i>	56	11/24/21	78	(104 pgs) Transcript regarding Hearing Held 11-23-2021 RE: Motion Hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/22/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Liberty Transcripts/Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 75 Hearing held on 11/23/2021. (RE: related document(s) 55 MOTION to Stay filed by CLO Holdco Ltd, Charitable DAF Fund LP (Sbaiti, Mazin) (Entered: 08/26/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #55 ON 08/26/2021 IN U.S.]
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			DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied. Mr. Pomerantz to upload order.), 76 Hearing held on 11/23/2021. (RE: related document(s) 47 Motion to strike 43 Appendix in support filed by CLO Holdco, Ltd., Charitable DAF Fund, LP (Bridges, Jonathan) Modified text on 7/16/2021 (mjr). (Entered: 07/15/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #47 ON 07/15/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied (Plaintiffs acknowledged complained-of Appendices it did not relate to Motion to Dismiss). Mr. Pomerantz to upload order.)). Transcript to be made available to the public on 02/22/2022. (Patel, Dipti)
Vol. 33 007065	57	2/21/23	164 164 (112 pgs) Transcript regarding Hearing Held 1/25/23 RE: HEARING ON DEFENDANT HIGHLAND CAPITAL MANAGEMENT L.P.'S RENEWED MOTION TO DISMISS COMPLAINT (122) AND STATUS CONFERENCE RE: MOTION FOR WITHDRAWAL OF REFERENCE FILED BY PLAINTIFF CLO HOLDCO, LTD., PLAINTIFF CHARITABLE DAF FUND, LP (128). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/22/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 155 Hearing held on 1/25/2023. (RE: related document(s) 122 Motion to dismiss adversary proceeding, (Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint) filed by Defendant Highland Capital Management, LP filed by Defendant Highland Capital Management, LP) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court took matter under advisement.), 156 Hearing held on 1/25/2023. (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court announced it will recommend denial to District Court. Court is working on Report & Recommendation.)). Transcript to be made available to the public on 05/22/2023. (Patel, Dipti)

Dated: July 14, 2023

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti _____

Mazin A. Sbaiti
Texas Bar No. 24058096
Jonathan Bridges
Texas Bar No. 24028835
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jeb@sbaitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 14th day of July, 2023.

/s/ Mazin A. Sbaiti _____

Mazin A. Sbaiti

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

F. Summary of Settlement Terms

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;⁵
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of \$45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of \$35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of \$45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

⁵ The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately \$22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court’s TRO that restricted HCLOF’s ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor’s estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's \$300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 266326)
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-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable
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Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

EXHIBIT 3

002962

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

R E C I T A L S

WHEREAS, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

WHEREAS, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

WHEREAS, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

WHEREAS, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

WHEREAS, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

WHEREAS, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

WHEREAS, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

WHEREAS, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion” and together with the HarbourVest Response, the “HarbourVest Pleadings”);

WHEREAS, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

WHEREAS, the Debtor disputes the HarbourVest Claims;

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).¹

WHEREAS, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Settlement of Claims.

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. Releases.

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

¹ All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

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participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. Agreement Subject to Bankruptcy Court Approval. The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to **11 U.S.C. § 363**), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

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Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

HARBOURVEST

HarbourVest Partners L.P.
Attention: Michael J. Pugatch
One Financial Center
Boston, MA 02111
Telephone No. 617-348-3712
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP
Attention: M. Natasha Labovitz, Esq.
919 Third Avenue
New York, NY 10022
Telephone No. 212-909-6649
E-mail: nlabovitz@debevoise.com

THE DEBTOR

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
Telephone No.: 972-628-4100
Facsimile No.: 972-628-4147
E-mail: jpseeryjr@gmail.com

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with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
Facsimile No.: 310-201-0760
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

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14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Its: CEO/CRO

HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its
Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed
Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General
Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC,
its Managing Member**

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

Exhibit A

**TRANSFER AGREEMENT
FOR ORDINARY SHARES OF
HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of December [REDACTED], 2020 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
- d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
- e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to **Federal Rule of Bankruptcy Procedure 9019** of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.

2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:

- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
- b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
- c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
- d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
- e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:

- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
- b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
- c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.

4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).

5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):

- a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
- b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

- c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.

6. Miscellaneous.

- a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

TRANSFeree:

HCMLP Investments, LLC

By: Highland Capital Management, L.P.

Its: Member

By: _____

Name: James P. Seery, Jr.

Title: Chief Executive Officer

PORTFOLIO MANAGER:

Highland HCF Advisor, Ltd.

By: _____

Name: James P. Seery, Jr.

Title: President

FUND:

Highland CLO Funding, Ltd.

By: _____

Name:

Title:

[Additional Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

TRANSFERORS:

HarbourVest Dover Street IX Investment L.P.

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: _____

Name: Michael Pugatch

Title: Managing Director

HV International VIII Secondary L.P.

By: HIPEP VIII Associates L.P.
Its General Partner

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest Skew Base AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global Fund L.P.

By: HarbourVest 2017 Global Associates L.P.
Its General Partner

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

Exhibit A

<u>Transferee Name</u>	<u>Number of Shares</u>	<u>Percentage</u>
HarbourVest Dover Street IX Investment L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global AIF L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global Fund L.P.	[REDACTED]	[REDACTED]
HV International VIII Secondary L.P.	[REDACTED]	[REDACTED]
HarbourVest Skew Base AIF L.P.	[REDACTED]	[REDACTED]

EXHIBIT 4

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR JAMES DONDERO

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Debtor.

§§§§§

Case No. 19-34054

Chapter 11

**JAMES DONDERO'S OBJECTION TO DEBTOR'S MOTION FOR ENTRY
OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST**

[Relates to Docket No. 1625]

James Dondero (“Respondent”), a creditor, indirect equity security holder, and party in interest in the above-captioned bankruptcy case, hereby files this Objection to *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) [Docket No. 1625]* (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”) pursuant to Rule 9019 of the Federal



Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Respondent respectfully represents as follows:

I. INTRODUCTION

1. Under Bankruptcy Rule 9019, the Bankruptcy Court is tasked with making an independent judgment on the merits of a proposed settlement to ensure that the proposed settlement is “fair, equitable, and in the best interest of the estate.”¹ While Respondent recognizes the Debtor’s efforts in arranging a settlement, there are at least three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim (as hereinafter defined); (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a significant claim to which it would not otherwise be entitled; and (iii) the proposed settlement seeks to improperly classify the HarbourVest Claim² in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. Moreover, the proposed settlement does not satisfy the factors for approval fixed by case law. On information and belief, Debtor’s CEO/CRO, Mr. Seery, has previously asserted on multiple occasions that the HarbourVest Claim had no value and that the Debtor could resolve such claim for no more than \$5 million. While Respondent and Mr. Seery have had a number of disagreements in this case, Respondent agrees with Mr. Seery’s initial conclusion that the HarbourVest Claim is substantially without merit. Respondent understands that any settlement will not necessarily provide the best possible outcome for the Debtor, but in this instance the proposed settlement far exceeds the bounds of reasonableness and, on its face, is an attempt by the Debtor to purchase votes in favor

¹ See *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

² While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

of confirmation of its Plan. Given the Debtor's prior positions as to the merits of HarbourVest Claim it is necessary for the Court to closely scrutinize the settlement to determine why the Debtor now believes granting HarbourVest a net claim of nearly \$60 million³ resulting from HarbourVest's investment in a non-debtor entity (which was and is managed by a non-debtor) to be in the best interest of the estate. Upon close scrutiny, Respondent believes the Court will find that the proposed settlement is not reasonable or in the best interest of the estate and the Motion therefore should be denied.

II. BACKGROUND

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

5. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

³ The proposed settlement provides that HarbourVest shall receive an allowed general unsecured (Class 8) claim in the amount of \$45 million and an allowed subordinated general unsecured (Class 9) claim in the amount of \$35 million. As part of the settlement, HarbourVest will then transfer its entire interest in Highland CLO Funding, Ltd. ("HCLOF") to an entity to be designated by the Debtor. The Debtor states that the value of this interest is approximately \$22 million as of December 1, 2020.

6. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms.

7. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. *See Docket No. 854.*

8. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the "HarbourVest Claim")⁴.

9. On July 30, 2020, the Debtor filed *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the "Debtor Objection"), which contained an objection to the HarbourVest Claim.

10. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "HarbourVest Response").

11. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. *Docket No. 1625.*

III. LEGAL STANDARD

12. The merits of a proposed compromise should be judged under the criteria set forth in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). *TMT Trailer* requires that a compromise must be "fair and equitable." *TMT Trailer*, 390

⁴ While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. *See* Claim Nos. 143, 147, 149, 150, 153, and 154.

U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir. 1984). The terms “fair and equitable,” commonly referred to as the “absolute priority rule,” mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the compromise is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

13. In determining whether a proposed compromise is fair and equitable, a Court should consider the following factors:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

TMT Trailer, 390 U.S. at 424.

14. In considering whether to approve a proposed compromise, the bankruptcy judge “may not simply accept the trustee’s word that the settlement is reasonable, nor may he merely ‘rubber stamp’ the trustee’s proposal.” *In re Am. Res. Corp.*, 841 F.2d 159, 162 (7th Cir. 1987). “[T]he bankruptcy judge must apprise himself of all facts necessary to evaluate the settlement and make an informed and independent judgment about the settlement.” See *TMT Trailer*, 390 U.S. at 424, 434.

15. While the trustee’s business judgment is entitled to a certain deference, “business judgment is not alone determinative of the issue of court approval.” See *In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). Further, the business judgment rule does not provide a debtor with “unfettered freedom” to do as it wishes. See *In re Pilgrim’s Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) (“[A]s a fiduciary holding its estate in trust and responsible

to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.”). The Court must conduct an “intelligent, objective and educated evaluation”⁵ of the proposed settlement “to ensure that the settlement is fair, equitable, and in the best interest of the estate and creditors.” *See In re Mirant Corp.*, 348 B.R. 725, 739 (Bankr. N.D. Tex. 2006) (quoting *Conn. Gen. Life Ins. Co. v. Foster Mortgage Corp.* (*In re Foster Mortgage Corp.*), 68 F.3d 914, 917 (5th Cir. 1995)).

IV. ARGUMENT AND AUTHORITIES

16. As discussed in detail below, there are three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim; (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a substantial claim to which it is not entitled; and (iii) the proposed settlement seeks to improperly classify HarbourVest’s one claim in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. For these and certain additional reasons as discussed below, the Motion should be denied.

A. Through its Claim, HarbourVest Seeks to Revisit this Court’s Orders in the Acis Case

17. As an initial matter, through its proofs of claim, HarbourVest appears to be second guessing the Court’s judgment in the Chapter 11 case of Acis Capital Management, LP and Acis Capital Management GP, LLC (collectively, “Acis”) and seeking to revisit the Court’s orders entered in that case years ago. HarbourVest appears to be arguing that the TRO and injunction

⁵ *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (“To assure a proper compromise the bankruptcy judge, must be apprised of all the necessary facts for an intelligent, objective and educated evaluation. He must compare the terms of the compromise with the likely rewards of litigation.”).

entered in the Acis case that prevented redemptions or resets in the CLOs are now the root cause of the decrease in value of its investment in HCLOF.

18. Specifically, the claim states that HarbourVest incurred “financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF.”⁶

19. Essentially, HarbourVest is saying that the orders entered in the Acis case did not actually protect the investors and their investments, but instead were a triggering cause for the alleged diminution in value of its investment in HCLOF. Nevertheless, even though the value of HCLOF dropped dramatically only after the Effective Date of Acis’s Plan, years later and despite the lack of Debtor involvement in managing HarbourVest’s investment, HarbourVest now seeks to impute liability to the Debtor through a flimsy narrative designed to recoup investment losses unrelated to the Debtor and for which the Debtor owed HarbourVest no duty.

20. That HarbourVest now, years later, seeks to revisit this Court’s Acis orders raises a number of issues, including those as to HarbourVest’s involvement (or lack thereof) in the Acis case, whether the orders, Plan, or Confirmation Order in the Acis case may bar some of the relief requested by HarbourVest here, and questions related to the merits of the HarbourVest Claim and the legal grounds allegedly supporting it.

⁶ See Proof of Claim 143, para. 3 (“Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF.”).

B. The HarbourVest Claim Lacks Merit and the Proposed Settlement is Not Reasonable

21. Based on the HarbourVest Claim and its filed response to the Debtor's objection, Respondent believes that the HarbourVest claim is meritless and the proposed settlement is not reasonable, fair and equitable, or in the best interest of the estate.

22. First, the proposed settlement is concerning particularly because HarbourVest's bare bones proof of claim contains very little in terms of allegations of specific conduct against the Debtor that would give rise to a \$60 million claim against this estate. While HarbourVest's response to the Debtor's claim objection is lengthy, it contains very little in real substance supporting its right to such a claim against the estate. The response also omits a number of key facts that are relevant and potentially fatal to its claim for damages against the Debtor's estate. Among them is the fact that Acis (and thereafter Reorganized Acis), along with Mr. Joshua Terry, managed HarbourVest's investment for years after it was made.⁷ Despite this fact, HarbourVest's alleged damages appear to be based largely on the difference between the value of its initial investment at confirmation of Acis's Plan and the current value of the investment—which amount was directly determined by the performance of the CLOs that Acis managed during this time.⁸ Neither the claim nor the response directly address the implications of Acis's management of the CLOs during the period following HarbourVest's investment. Nor does HarbourVest address or discuss performance of the CLOs, the market forces that may have caused HarbourVest's investment to lose value, or other factors influencing the current value of its investment. The

⁷ See, e.g., HarbourVest Proof of Claim 143, p. 5 ("The Claimant is a limited partner in one of the Debtor's managed vehicles, Highland CLO Funding, Ltd. ("HCLOF"). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, "Acis"), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the "Court") on January 30, 2018.").

⁸ See HarbourVest Response, [Docket No. 1057](#), para. 40 ("HarbourVest has been injured from the Investment: not only has the Investment failed to accrue value, its value plummeted. The Investment's current value is far less than HarbourVest's initial contribution.").

speculative nature of the damages and the lack of specificity of the HarbourVest Claim and the role of Acis in the loss of value to HarbourVest all call into question the reliability of the allegations and the legal basis for the claim amount awarded in the settlement.

23. Also absent from Harbourvest's papers is any discussion of any contract or agreement between (i) HarbourVest and the Debtor; and (ii) any agreement that was executed in conjunction with HarbourVest's initial investment. While the proof of claim references a number of agreements, there is no explanation in the claim or in HarbourVest's response to the Debtor's claim objection of how these agreements give rise to liability against the *Debtor*. For example, neither the claim nor the HarbourVest Response (which includes more than 600 pages of attachments) attach *any* written agreement between HarbourVest and **any other party**. While HarbourVest has alleged a number of claims sounding in tort, many of those claims cannot exist absent a contract or other express relationship between the parties. Moreover, the terms of the relevant contracts themselves likely contain a number of provisions that may call into question Debtor's liability or would be otherwise relevant to merits of the HarbourVest Claim. For example, HarbourVest in its papers appears to assert or imply that the Debtor made a number of false or fraudulent representations to solicit HarbourVest's investment, but then fails to discuss or even identify the applicable agreements it alleges it was induced into signing in connection with its investment (this despite the substantial value of the investment when the Acis plan was confirmed).

24. Given these issues, among many others, the HarbourVest Claim is unsustainable both from a liability and damages standpoint and there are many very high hurdles HarbourVest would have to clear in seeking to prove liability against the Debtor and in proving its damages. For a long period of time, its investment was managed by Acis and the investment's performance was directly tied to Acis's inadequate performance as portfolio manager. Further, the value of

HarbourVest's investment is also directly tied to various market forces that may have impacted its value. The HarbourVest Claim is largely lacking in relevant facts and omits much salient information, such as who it contracted with in connection with its investment, the terms of such agreements, who controlled its investment during the entire period from November 2017 to the present, and the performance of its investment during the last two years. Given these issues, HarbourVest will be unable to demonstrate a causal connection between any conduct of the Debtor and the alleged damages it suffered from a reduction in value of its investment.

25. Because of the speculative nature of the HarbourVest Claim, and the fact that very little pleading or litigation has occurred, the proposed settlement in granting such a large claim is unreasonable, not fair and equitable, and not in the best interest of the estate. The lack of pending litigation, narrowing of threshold questions, and lack of detail in HarbourVest Claim make it impossible to determine whether the huge claim awarded under the proposed settlement is justified under the facts. Accordingly, the Motion should be denied.

C. The Proposed Settlement is an Improper Attempt by the Debtor to Purchase Votes in Support of its Plan and the Separate Classification of the HarbourVest Claim Constitutes Gerrymandering in Violation of 11 U.S.C. § 1122

26. The proposed settlement is a flagrant attempt by the Debtor to purchase votes in support of its Plan by giving HarbourVest a significant claim to which it has not shown itself entitled. Moreover, the separate classification of the HarbourVest Claim into two separate classes constitutes impermissible gerrymandering in violation of section 1122 of the Bankruptcy Code. The proposed settlement essentially gives HarbourVest a claim it is not entitled to in exchange for votes in two separate classes. This is not a proper basis for a settlement and the Court should deny the Motion.

27. Section 1122 of the Bankruptcy Code provides as follows:

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122.

28. “Chapter 11 requires classification of claims against a debtor for two reasons. Each class of creditors will be treated in the debtor's plan of reorganization based upon the similarity of its members' priority status and other legal rights against the debtor's assets. Proper classification is essential to ensure that creditors with claims of similar priority against the debtor's assets are treated similarly.” *In re Greystone III Joint Venture*, 995 F.2d 1274, 1277 (5th Cir. 1991).

29. “Section 1122 consequently must contemplate some limits on classification of claims of similar priority. A fair reading of both subsections suggests that ordinarily substantially similar claims, those which share common priority and rights against the debtor's estate, should be placed in the same class.” *Id.* at 1278.

30. The Fifth Circuit has stated that there is “one clear rule that emerges from otherwise muddled caselaw on § 1122 claims classification: thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.” *Id.* at 1279. The Court observed:

There must be some limit on a debtor's power to classify creditors in such a manner. . . . Unless there is some requirement of keeping similar claims together, nothing would stand in the way of a debtor seeking out a few impaired creditors (or even one such creditor) who will vote for the plan and placing them in their own class.

In re Greystone III Joint Venture, 995 F.2d 1274, 1279 (5th Cir. 1991) (quoting *In re U.S. Truck Co.*, 800 F.2d 581, 586 (6th Cir. 1986)).

31. Here, the HarbourVest settlement and the classification of the HarbourVest Claim under the Plan blatantly violate the Fifth Circuit’s “one rule” concerning the classification of claims under section 1122. To the extent that HarbourVest even has a legitimate claim, not only should its claim be classified together with other unsecured creditors, its claim should be classified solely in one class. To allow the Debtor to do otherwise as proposed is improper gerrymandering in order to obtain a consenting class in express violation of section 1122.

D. There Are Other Reasons for the Court to Closely Scrutinize the Proposed Settlement that May Warrant Denial of the Motion

32. There are a number of other reasons for the Court to closely scrutinize the proposed settlement that may warrant denial of the Motion.

33. First, the granting to HarbourVest of a claim in the total amount of \$80 million potentially allows HarbourVest to achieve a significant windfall at the expense of other creditors and equity holders. The Debtor has asserted numerous times that the estate is solvent and, for this reason, the purported subordinated claim of \$35 million (if allowed and approved) may be worth just as much as its general unsecured claim. This is a huge figure in this case, outshined only by the Redeemer Committee, which has an actual arbitration award obtained after lengthy litigation. By contrast, the HarbourVest Claim contains only a few paragraphs of generalized allegations that essentially argue that the Debtor’s alleged actions related to the Acis bankruptcy, and this Court’s orders in the Acis case, are a “but for” cause of the loss of its investment. While the HarbourVest Response is lengthy, it lacks necessary details for the Court to determine whether HarbourVest *may* be entitled to the relief requested by the Motion. The other significant creditors in this case—*inter alia*, Redeemer, UBS and Acis—all had pending claims that were litigated. Nor is HarbourVest a trade creditor, vendor, or other contract counter-party of the Debtor. The HarbourVest Claim is thus uniquely situated in this case and, given the size and the nature of its

claims, should invite close scrutiny. Under these facts, the potential allowance of an \$80 million claim (less the value of its share in HCLOF, which may suffer by continued management by Acis) against the estate for an investment which was not held or managed by the Debtor would be a huge undue windfall.

34. Second, the Motion states that HarbourVest will vote its proposed allowed Class 8 (proposed at \$45 million) and Class 9 (proposed at \$35 million) claims in support of confirmation. There are at least two potential issues with this proposal. First, the deadline for parties to submit ballots was January 5, 2021, and as of the close of business on January 5, the HarbourVest Claim has not been allowed for voting purposes.⁹ Second, the Motion and proposed settlement agreement state that the HarbourVest Claim will be allowed for voting purposes only as a general unsecured claim in the amount of \$45 million. It is unclear how HarbourVest can, or would be authorized to, vote its purported Class 8 and 9 Claims in support of the Plan after the voting deadline and when the settlement provides only for a voting claim in Class 8.

35. Third, while the Motion addresses the factor of probability of success in the litigation, it does not discuss in detail the cost of doing so in relation to the amount to be paid to HarbourVest under the settlement or the likelihood that the Debtor will succeed in the litigation. In addition, unlike the claims filed by Acis and UBS, the HarbourVest Claim does not arise from pending litigation. At this point, relatively little litigation has occurred and the parties have not addressed threshold issues that might dramatically narrow the scope of the HarbourVest Claim. Rule 9019 requires an analysis as to whether the probability of success in litigation is outweighed by the consideration achieved under the settlement. *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (The Court must “compare the terms of the compromise with the likely rewards

⁹ The hearing on the 3018 and 9019 motions are set concurrently with confirmation.

of litigation.”). Given the excessive amount to be paid under the settlement and the weakness of the HarbourVest Claim, this factor weighs in favor of denial of the Motion.

36. Fourth, it is unclear from the settlement papers whether the transfer by HarbourVest of its interest in HCLOF to the Debtor or an entity the Debtor designates will cause the value of the investment to be received by the Debtor’s estate. Further, the interest of HCLOF being conveyed under the proposed settlement may be subject to the Acis plan injunction, which could potentially prevent the Debtor’s estate from realizing the value of this interest. In the event the Court is inclined to approve the settlement, the order should make clear that the available value of the investment should be realized by the Debtor’s estate.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court enter an order denying the Motion and providing Respondent such other and further relief to which he may be justly entitled.

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Dated: January 6, 2021

Respectfully submitted,

/s/ D. Michael Lynn

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ATTORNEYS FOR JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

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002998

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UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

* Chapter 11

*

* Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

*

*

Debtor

*

*

**OBJECTION TO DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

The Dugaboy Investment Trust and Get Good Trust (jointly, "Objectors"), submit this Objection for the purpose of objecting to the *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Dkt. #1625] (the "Motion") filed by Highland Capital Management, L.P. (the "Debtor"). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest") pursuant to Rule 9019 of the



Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Objectors respectfully represent as follows:

I. INTRODUCTION

1. Objectors recognize that Courts favorably view settlements and, as a matter of course, generally approve settlements as being in the best interest of the bankruptcy estate. The settlement proposed herein, however, is different than other settlements inasmuch as it represents a 180 degree departure from the Debtor’s own analysis of the Claim of HarbourVest and the fact that the settlement is tied to HarbourVest approving the Debtor’s plan. Little or no information is provided by the Debtor as to why its initial analysis was flawed and what information or legal principal it discovered to change a zero claim into a massive claim that will have a significant impact on the recovery to creditors.

II. BACKGROUND

2. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the venue of this case was transferred. [Dkt. #186].

5. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. [See Dkt. #854].

6. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the “HarbourVest Claim”)¹.

7. On July 30, 2020, the Debtor filed *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #906] (the “Debtor Objection”), which contained an objection to the HarbourVest Claim.

8. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #1057] (the “HarbourVest Response”).

9. The Debtor, in its *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. #1473 pgs. 40-41], described its position relative to the HarbourVest Claim as follows:

The Debtor intends to **vigorously** defend the HarbourVest Claims on various grounds The HarbourVest Entities invested approximately \$80,000,000.00 in HCLOF but seek an allowed claim in excess of 300 million dollars (after giving effect to treble damages for the alleged RICO violations)

10. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. [Dkt. # 1625].

11. The proposed settlement provides HarbourVest with the following:

- a. An allowed, general unsecured claim in the amount of \$45,000,000.00 [Dkt. #1625 pg. 9 pp.f]; and

¹ While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

b. A \$35,000,000 claim in Class 9 [Dkt. #1625 pg. 9 pp.f].

12. An integral element of the settlement requires that HarbourVest will “support confirmation of the Debtor’s Plan including, but not limited to, voting its claims in support of the Plan.”

13. The settlement also contains a provision that HarbourVest will transfer its entire interest in HCLOF to an entity to be designated by the Debtor. It is unclear whether HarbourVest has a right to transfer the interest and secondly, what the Debtor will do with the interest [Dkt. #1625 pp.f].

14. The sole support for the Motion is the Declaration of John Morris [Dkt. #1631] which fails to account for the enormous change in the Debtor’s position between November 24, 2020 when the Disclosure Statement was approved and December 23, 2020 when the Motion was filed, a period of less than thirty (30) days.

15. The Declaration of John Morris [Dkt. #1631] also contains no information as to the potential cost of the litigation, whether HarbourVest can transfer the interest or reasons, other than conclusory reasons, as to why the settlement is beneficial to the estate. The Debtor makes the assertion that the interest it is acquiring was worth \$22,000,000.00 as of December 1, 2020 without advising as to the basis for the valuation. Is it a book value and, if not, what was the methodology employed to arrive at the valuation? The Court has no basis to evaluate the settlement without essential information as to 1) how the asset being acquired is valued; 2) can the Debtor acquire the interest; and 3) how will the Debtor bring value to the estate in connection with the interest inasmuch as the Debtor has discretion as to where to place the asset to be acquired.

A. **LEGAL STANDARDS**

16. The law relative to approval of motions pursuant to BR 9019 is well settled. The settlement must be fair and equitable. *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980). The factors the Court should consider are the following:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968).

17. Although the Debtor's business judgment is entitled to a certain deference, "business judgment" is not alone determinative of the issue of court approval. *See In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). However, notwithstanding the business judgment rule, a debtor does not have unfettered freedom to do what it wishes. *See In re Pilgrim's Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) ("[A]s a fiduciary holding its estate in trust and responsible to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.").

B. ISSUES WITH THE SETTLEMENT

18. Objectors believe that the following issues are not explained or addressed in the Motion and, thus, the Motion should be denied:

- a) The settlement represents a radical change in the Debtor's position that was set forth in its Disclosure Statement. While the Debtor asserts that its position is

based on its fear of parties' oral testimony, the size of the transactions at issue make the case a document case, as opposed to who said what, when and how. A review of the applicable documents to determine whether they support the Debtor's initial position is warranted, as opposed to stating that the case is based upon the credibility of a witness. This settlement is not the settlement of an automobile accident where the parties are disputing who ran a red light;

- b) The settlement requires HarbourVest to support and vote in favor of the Debtor's Plan. On its face this appears to be vote buying. The settlement should not be conditioned upon HarbourVest's support or non-support of the Plan and its vote in favor or against the Plan; and
- c) No information is provided as to whether the Debtor can acquire the interest in HCLOF, liquidate the interest, who will receive the interest, or how will the estate benefit from the interest to be acquired.

CONCLUSION

The settlement with HarbourVest has too many questions to be approved on the record before this Court and the parties, due to the Notice of the Motion, the holidays and the press of other litigation in this case, do not have the time to adequately investigate the propriety of the settlement.

January 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on the 8th day of January, 2021, a copy of the above and foregoing *Objection To Debtor's Motion For Entry Of An Order Approving Settlement With Harbourvest (Claim Nos. 143, 147, 149, 150, 153, 154) And Authorizing Actions Consistent Therewith* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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ATTORNEYS FOR CLO HOLDCO, LTD.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: §
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-SGJ
§
Debtor. § Chapter 11
§

CLO HOLDCO, LTD.'S OBJECTION TO HARBOURVEST SETTLEMENT

TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:

CLO Holdco, Ltd. ("CLO Holdco") respectfully files this *Objection to Harbourvest Settlement* (the "Harbourvest Settlement Objection") which seeks entry of an order from this Court denying the Debtor's *Motion for Entry of an Order Approving Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* (the "Harbourvest Settlement Motion") for the reasons stated below. In support of the Harbourvest Settlement Objection, CLO Holdco respectfully states as follows:

I.
BACKGROUND

A. TRANSFERRING SHARES IN HCLOF



1. CLO Holdco owns 75,061,630.55 shares, or about 49.02% of Highland CLO Funding, Ltd. ("HCLOF"). Other shareholders include Harbourvest 2017 Global AIF L.P., Harbourvest Global Fund L.P., Harbourvest Dover Street IX Investment L.P., and Harbourvest Skew Base AIF L.P., and HV International VIII Secondary L.P. (collectively, "Harbourvest"). Harbourvest owns approximately 49.98% of HCLOF. The remaining 1% is owned by the Debtor and a five other investors.

2. HCLOF is governed by a *Members Agreement Relating to the Company* dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco (the "Member Agreement"). A copy of that agreement is attached hereto as **Exhibit A**.

3. Section 6 of the Member Agreement addresses the "Transfer or Disposals of Shares." MEMBER AGREEMENT, § 6. The Member Agreement places strict restrictions on the sale or transfer of shares to entities other than the initial Member's own affiliates. *See id.* at §§ 6.1, 6.2. Before a Member can transfer its interests to a party other than its own affiliates it must: (i) obtain the prior written consent of the Portfolio Manager; and (ii) "offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter" (the "Right of First Refusal"). *Id.* As further stated in section 6.2 of the Member Agreement, "The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred." *Id.* at § 6.2.

B. THE HARBOURVEST SETTLEMENT

4. On December 23, 2020, the Debtor filed the Harbourvest Settlement Motion. On the following day, the Debtor filed a copy of the Settlement Agreement referenced in the

Harbourvest Settlement Motion (the "Settlement Agreement") [Dkt. No. 3]. In the Settlement Agreement, Harbourvest represents and warrants that it is authorized to transfer its interest in HCLOF to the Transferee, HCMLP Investments, LLC (the "Transferee"). SETTLEMENT AGREEMENT, Ex. A. § 3. Further, the Transferee and Debtor agree to be bound by the terms and conditions of the Member Agreement. *Id.* at § 1.c.

5. In exchange for conveniently classified allowed claims under the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Plan") [Dkt. No. 1472], Harbourvest agrees to vote in favor of the Plan and to transfer all of its interests in HCLOF to the Transferee. SETTLEMENT AGREEMENT, § 1.

6. As detailed below, CLO Holdco objects to the Harbourvest Settlement Motion because Harbourvest has no authority to transfer its interests in HCLOF without first complying with the Right of First Refusal. The only way to effectuate such a transfer without first providing other members the Right of First Refusal is an intentionally inaccurate interpretation of the Member Agreement's contractual provisions that would render specific passages redundant and meaningless. More simply put, the only way Harbourvest and the Debtor could effectuate the Settlement Agreement is by violating fundamental tenets of contract interpretation.

II. ARGUMENTS AND AUTHORITIES

A. CONTRACT INTERPRETATION – AVOIDING REDUNDANCIES AND SURPLUS LANGUAGE

7. The Fifth Circuit recognizes fundamental tenets of contract interpretation, and notes that "contracts should be read as a whole, viewing particular language in the context in which it appears. *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, 51 F. App'x 930 (5th Cir. 2002) (citing Restatement (Second) of Contracts § 202 (1981)). The Fifth Circuit has applied substantially the same tenets of contract interpretation across the laws of various jurisdictions, and consistently reasons that "[a]ll parts of the agreement are to be reconciled, if possible, in order to avoid an

inconsistency. A specific provision will not be set aside in favor of a catch-all clause." *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 947 (5th Cir. 1981) (internal citations omitted); and *see Hawthorne Land Co. v. Equilon Pipeline Co., LLC*, 309 F.3d 888, 892-93 (5th Cir. 2002); *Luv N' Care, Ltd. v. Grupo Rimar*, 844 F.3d 442, 447 (5th Cir. 2016); *Wooley*, 51 F.Appx. at 930.

8. Reconciliation of terms that would otherwise render other parts of a contract redundant is fundamental to proper contract interpretation. *Hawthorne Land*, 309 F.3d at 892-93. As the Fifth Circuit explained in *Hawthorne Land*, "each provision of a contract must be read in light of the other provisions so that each is given the meaning suggested by the contract as a whole. A contract should be interpreted so as to avoid neutralizing or ignoring a provision or treating it as surplusage." *Id.* (internal citations and quotations omitted). In other words, provisions of a contract should be read to create harmony, not internal inconsistencies, redundancies, and unnecessary surplus language. *See, e.g., Luv N' Care*, 844 F.3d at 447 (overturning district court on appeal by interpreting contract in manner that eliminated perceived redundancy).

B. ANALYZING THE MEMBER AGREEMENT

9. Section 6.1 of the Member Agreement will almost certainly be cited by the Debtor and Harbourvest as authority for their entry into the Settlement Agreement, regardless of whether other Members or the Portfolio Manager consent. It states, in pertinent part, that:

No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio Manager...

MEMBER AGREEMENT, § 6.1. Harbourvest will likely stress that under the terms of the Member Agreement, it can transfer its interests so long as the transfer is to "an Affiliate of an initial Member." Indeed, the Debtor will no doubt point out to this Court that Harbourvest is

conveniently transferring its interests in HCLOF to an Affiliate of the Debtor, and that the Debtor is an initial Member listed in the Member Agreement.

10. Section 6.1, however, must be read in the context of the Member Agreement, and in conjunction with the transfer restrictions found in section 6.2. Read together it is clear that the consent exception allowing a transfer in 6.1 was intended to allow a Member to transfer its shares to *its* own Affiliate, without required consents and effectuating a Right of First Refusal. Doing so would allow inter-company transfers within a corporate structure without the need for complicated procedures. Applying Fifth Circuit precedent, this interpretation fits squarely within the agreement and gives weight to the terms of section 6.2 of the Member Agreement, as explained below.

(i) Surplusage – Specific Allowance of Transfers by CLO Holdco to Debtor Affiliates

11. Recall that both CLO Holdco and the Debtor are initial Members to the Member Agreement. MEMBER AGREEMENT, p. 3. Section 6.2 of the Member Agreement states, in pertinent part, that "Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, *in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal*) a Member must first..." comply with the Right of First Refusal. *Id.* at § 6.2 (emphasis added). The italicized language above is important for two reasons: (i) it specifically enumerates that CLO Holdco can transfer its interests to Debtor Affiliates without having to pursue the Right of First Refusal; and (ii) it allows only limited transfers between Members, as opposed to between a Member and an Affiliate of an initial Member.

12. If, as the Debtor and Harbourvest will likely argue, Members are allowed to transfer their interests to any Affiliates of any other initial Members, there is absolutely no need for the Member Agreement to specifically authorize CLO Holdco to transfer its interests to the Debtor's Affiliates. Per Fifth Circuit fundamentals of contract interpretation, that purported redundancy

should not be discarded as mere surplusage, and the Member Agreement should be interpreted in a manner that gives weight to that provision. *Hawthorne Land*, 309 F.3d at 892-93.

13. If the Member Agreement is read to literally allow all "Transfers to Affiliates of an initial Member" there would be no reason to expressly set forth allowed transfers between specific Members and other Member's Affiliates. If the Member Agreement sought to list all allowed transfers between Members and their Affiliates, it should have similarly noted that any Member could transfer its interest to any Harbourvest Member entity, as each Harbourvest Member entity is an Affiliate of the other Harbourvest Member entities. Alternatively, if the specific enumeration of CLO Holdco and the Highland Principals' transfer rights was surplusage, it would presumably have listed other parties' rights, or had inclusive language such as "including but not limited to" or "for example." The Member Agreement lacks such language and, as a result, should be interpreted in a manner that both gives weight to the specific provision while reconciling other provisions of the contract.

(ii) Absurd Results – Disparate Transfer Rights Between Members

14. Note that the Member Agreement does not generally allow a transfer of interests from Member to Member unless specifically enumerated. Section 6.2 specifically allows only CLO Holdco and the Highland Principals to make transfers to other Members, but those other Members include only the Debtor or another Highland Principal. MEMBER AGREEMENT, § 6.2. It does not allow the Debtor to transfer interests to any Member, and does not expressly allow any Member, other than limited transfers by CLO Holdco and the Highland Principals, to transfer interests to any other Member. *Id.* For instance, if the Debtor wished to transfer its interests to CLO Holdco, it would first have to offer all of the other Members their Right of First Refusal. *Id.*

15. Similarly, if Harbourvest wished to transfer its interest to CLO Holdco, it could not do so without first providing the Right of First Refusal to all other Members. *Id.* As noted above,

however, allowing a Member to transfer its interest to an Affiliate of any initial Member would allow *all* of the Members to transfer their interests to any Harbourvest Member entity, as the Harbourvest Members are Affiliates of each other. Given the specific enumeration of CLO Holdco and the Highland Principals' rights to inter-Member transfers, it would be inconsistent to expand that specific provision to allow all transfers by all Members to any Harbourvest entity without first providing a Right of First Refusal.

16. Such a reading would lead to absurd results. It would grant similarly situated Members profoundly disparate rights under the agreement, and could easily lead to manipulation. For instance, because the Harbourvest Members are technically Affiliates of an initial Member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer. No other Member could do that. For instance, if CLO Holdco wished to acquire other Members' interests, the transferring member (including Harbourvest) would have to offer a Right of First Refusal in *every instance*. To resolve that potential disparate treatment—though CLO Holdco and Harbourvest own nearly identical ownership interests in HCLOF—CLO Holdco would have to form an Affiliate and acquire interests through the Affiliate. That simply *cannot* be the intended result of the Member Agreement.

17. Instead, the Member Agreement must be read to require Harbourvest to provide a Right of First Refusal to the other Members of HCLOF before transferring its interests to either the Debtor or the Transferee.

C. THE RIGHT OF FIRST REFUSAL IN BANKRUPTCY

18. Most cases addressing third party rights of first refusal in bankruptcy involve the assignment of leases and landlords' rights of first refusal. In those cases, courts analyze whether such a provision in the *debtor's* contract is a defacto restriction on assignment that may be excised

from the agreement. This case is very different. Here, it is a creditor that owes a right of first refusal to another non-debtor entity.

19. Even so, at least one court has issued telling commentary on a bankruptcy court's ability to excise provisions of a bargained-for contract, stating "A bankruptcy court's authority to excise a bargained for element of a contract is questionable and modification of a nondebtor contracting party's rights is not to be taken lightly." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 51-52 (Bankr. M.D.N.C. 2003) (citing *In re Joshua Slocum Ltd.*, 922 F.2d 1081, 1091 (3d Cir. 1991)). CLO Holdco was unable to find any case that would allow a bankruptcy court to invalidate or otherwise excise a third party's right of first refusal in what largely amounts to a non-debtor contract.

20. As the Member Agreement requires Harbourvest to provide a Right of First Refusal to the non-Debtor Members under section 6.2 of the Agreement, and such Members have 30 days to review and determine whether to purchase their pro-rata shares offered by Harbourvest, Harbourvest lacks contractual authority to enter into the Settlement Agreement.

D. HARBOURVEST'S LACK OF AUTHORITY PRECLUDES ENFORCEMENT OF SETTLEMENT

21. Harbourvest has not completed its conditions precedent to the transfer of its interest to Transferee under the Member Agreement. As detailed above, and in section 6.2 of the Agreement, Harbourvest must effectuate the Right of First Refusal before it can transfer its interests in HCLOF. MEMBER AGREEMENT, § 6.2. Harbourvest is, in essence, bound by the condition precedent of effectuating the Right of First Refusal before it is authorized under the Member Agreement to enter into the Settlement Agreement.

22. Courts should not enforce a settlement agreement where a party has a condition precedent to entry into the agreement and fails to satisfy that condition. *In re De La Fuente*, 409 B.R. 842, 846 (Bankr. S.D. Tex. 2009). As noted in part in *De La Fuente*, the court would not recognize

or enforce a settlement where the parties were subject to conditions precedent before the settlement could be effective, and the conditions precedent were not satisfied. This Court should similarly deny Harbourvest's proposed settlement, as it would deny the Members' Right of First Refusal, which is the benefit of their bargain under the Member Agreement.

III.
PRAYER FOR RELIEF

WHEREFORE, CLO Holdco requests that this Court grant the Objection and enter an order denying the Harbourvest Settlement Motion.

DATED: January 8, 2020

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: /s/ John J. Kane

Joseph M. Coleman
State Bar No. 04566100
John J. Kane
State Bar No. 24066794

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ATTORNEYS FOR CLO HOLDCO, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, a true and correct copy of the foregoing CLO Holdco Objection was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the United States Trustee at Lisa.L.Lambert@usdoj.gov and upon the following parties:

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/s/ John J. Kane
John J. Kane

EXHIBIT 7

003020

1
2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 IN RE:

5 CHAPTER 11

6 CASE NO.

7 HIGHLAND CAPITAL 19-34054-
MANAGEMENT, L.P. SGJLL

8 Debtor.
9
10
11 Confidential - Under Protective Order

12 REMOTE DEPOSITION OF
13 MICHAEL PUGATCH
Zoom Videoconference
01/11/2021
14 1:07 P.M. (EDT)

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23

24 REPORTED BY: AMANDA GORRONO, CLR
CLR NO. 052005-01
25 JOB NO. 188591

	Page 2	Page 3
1		1
2	01/11/2021	2 APPEARANCES: (Via Remote)
3	1:07 P.M. (EDT)	3 PACHULSKI STANG ZIEHL & JONES
4		4 Attorneys for Debtor
5		5 780 Third Avenue
6	REMOTE ORAL DEPOSITION OF MICHAEL	6 New York, New York 10017
7	PUGATCH, held virtually via Zoom	7 BY: JOHN MORRIS, ESQ.
8	Videoconferencing, pursuant to the	8 HAYLEY WINOGRAD, ESQ.
9	Federal Rules of Civil Procedure before	9
10	Amanda Gorrono, Certified Live Note	10 BONDS ELLIS EPPICH SCHAFER JONES
11	Reporter, and Notary Public of the State	11 Attorneys for Jim Dondero
12	of New York.	12 420 Throckmorton Street
13		13 Fort Worth, Texas 76102
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16		16
17		17 DEBEVOISE & PLIMPTON
18		18 Attorneys for HarbourVest
19		19 919 Third Avenue
20		20 New York, New York 10022
21		21 BY: ERICA WEISGERBER, ESQ.
22		22 M. NATASHA LABOVITZ, ESQ.
23		23 EMILY HUSH, ESQ.
24		24 DANIEL STROIK, ESQ.
25		25
	Page 4	Page 5
1		1
2	APPEARANCES: (Via Remote)	2 APPEARANCES: (Via Remote)
3	KANE RUSSELL COLEMAN & LOGAN	3 KING & SPALDING
4	Attorneys for CLO Holdco Limited	4 Attorney for Highland CLO Funding, Ltd.
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6	901 Main Street	6 Atlanta, Georgia 30309
7	Dallas, Texas 75202	7 BY: MARK MALONEY, ESQ.
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9		9
10	HELLER, DRAPER, HAYDEN, PATRICK, & HORN	10
11	Attorneys for The Dugaboy Investment	11 ALSO PRESENT:
12	Trust and the Get Good Trust	12 ALIZA GOREN, ESQ.
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14	New Orleans, Louisiana 70130	14
15	BY: DOUGLAS DRAPER, ESQ.	15
16		16
17	LATHAM & WATKINS	17
18	Attorney For UBS	18
19	885 Third Avenue	19
20	New York, New York	20
21	BY: SHANNON MCLAUGHLIN, ESQ.	21
22		22
23		23
24		24
25		25

	Page 6	Page 7
1		1
2	I N D E X	2 Exhibit 8 E-mail 08/15/2017..... 68
3		3 Exhibit 9 11/29/2017 E-mail with 79
4	WITNESS EXAMINATION BY PG	4 cover letter Highland
5	MICHAEL PUGATCH MR. WILSON 10, 148	5 Capital Management.....
6	MR. KANE 122	6 Exhibit 10 2004 Examination of 83
7	MS. WEISGERBER 147	7 Investor in Highland CLO
		8 Funding Ltd. 10/10/2018....
		9 Exhibit 11 Declaration of John A. 109
		10 Morris in Support of the
		11 Debtor's Motion For Entry
		12 of an Order Approving
		13 Settlement With
		14 Harbourvest (Claim Nos.
		15 143, 147, 149, 150, 153,
		16 154) and Authorizing
		17 Actions, 82 pages.....
		18
		19
		20 R E Q U E S T S
		21 DESCRIPTION PG
		22 Transcript be marked Confidential 10
		23 under the Protective Order.....
		24
		25
	Page 8	Page 9
1		1
2	MR. WILSON: I'm John Wilson	2 the line by my colleagues from
3	with the firm of Bonds Ellis Eppich	3 Debevoise, Natasha Labovitz and Emily
4	Schafer Jones LP. And I represent Jim	4 Hush, and Aliza Goren from HarbourVest
5	Dondero.	5 is on the line, as well.
6	MR. MORRIS: John Morris and	6 MR. WILSON: As a preliminary
7	Hayley Winograd of Pachulski Stang	7 matter, the witness' counsel has
8	Ziehl & Jones for the Debtor.	8 produced some documents to us that
9	MS. WEISGERBER: Erica	9 they've requested be subject to the
10	Weisgerber from Debevoise & Plimpton	10 confidentially order or a brief
11	for HarbourVest.	11 protective order entered at Document
12	MR. KANE: John Kane of Kane	12 Number 382, in this case.
13	Russell Coleman & Logan, for CLO	13 And she's also requested that
14	Holdco Limited.	14 all counsel and participants in this
15	MR. DRAPER: Douglas Draper of	15 deposition agree to be bound by the
16	Heller Draper & Horn, for The Dugaboy	16 terms of that order, because some of
17	Investment Trust and the Get Good	17 the documents that were produced are
18	Trust.	18 stamped "confidential," and they want
19	MS. McLAUGHLIN: Shannon	19 to maintain that confidentially.
20	McLaughlin from Latham & Watkins LLP	20 Do we have an agreement of all
21	for UBS.	21 counsel and participants on the
22	MR. MALONEY: Mark Maloney from	22 deposition to be bound by the terms of
23	King & Spalding, on behalf of Highland	23 that agreed protective order?
24	CLO Funding Limited.	24 (All agreed.)
25	MS. WEISGERBER: I'm joined on	25 MS. WEISGERBER: Okay. I think

<p>1 Confidential - Pugatch 2 that was everyone. Thank you all for 3 confirming. And the deposition will 4 be marked "confidential" until and 5 unless HarbourVest designates the 6 testimony otherwise. 7 MR. WILSON: And that's fine. 8 (Whereupon, a request for 9 Transcript be marked Confidential 10 under the Protective Order was made.) 11 MICHAEL PUGATCH, 12 called as a witness, having been 13 first duly affirmed by a Notary Public of 14 the State of New York, was examined and 15 testified as follows: 16 EXAMINATION 17 BY MR. WILSON: 18 Q. All right. Mr. Pugatch, how do 19 you pronounce your name? I'm sorry. 20 A. Yep, you've got it. Pugatch. 21 Q. Pugatch. Okay. Can you state 22 your full name for the record? 23 A. Yeah. Michael Pugatch. 24 Q. Okay. And you've been 25 designated by HarbourVest to discuss some</p>	Page 10	Page 11
<p>1 Confidential - Pugatch 2 going to be giving answers. If at any 3 time I ask a question that you don't 4 understand, or we've had some problems 5 with sometimes connectivity issues with 6 Zoom. But yeah, any time that you don't 7 understand my question or you didn't catch 8 it, I'll be happy to repeat it. 9 Also, one thing I found with 10 Zoom is that it's easier to talk over 11 people. I'll try not to talk over you. I 12 would ask that you try to ensure that I've 13 finished asking my question before you 14 start your answer. And I will likewise 15 try to ensure that you've finished your 16 answer before start my next question. 17 And at any time during this 18 deposition if you feel the need to take a 19 break, that's totally okay with me. The 20 one thing that I would ask is if I've just 21 asked a question, that you answer the 22 question before requesting the break. 23 And if we have that agreement 24 and the ground rules, then I think I'm 25 ready to start asking you my questions.</p>	Page 12	Page 13

<p>1 Confidential - Pugatch 2 MR. WILSON: Okay. Well, you 3 know, he was designated to talk about 4 these matters, and I'm just asking if 5 he discussed these matters with his 6 counsel his before his testimony. 7 That's all. I'm not asking the 8 substance of those communications. 9 MS. WEISGERBER: You're asking 10 about conversations with counsel. How 11 about you just ask if he's prepared to 12 talk about those topics today? 13 MR. WILSON: Okay. 14 BY MR. WILSON: 15 Q. Are you prepared to talk about 16 those topics today? 17 A. Yes. 18 Q. Okay. Now, HarbourVest has 19 filed several proofs of claim in this 20 matter, and it looks like those are 21 numbered 143 on behalf of HarbourVest, 22 217 Global Fund L.P., and 144 HarbourVest 23 2017 Global AIF, 149 HarbourVest Partners 24 L.P., 150 HarbourVest Dover Street, IX 25 Investment L.P., 153 HarbourVest -- or I'm</p>	Page 14	<p>1 Confidential - Pugatch 2 sorry, HV International VIII Secondary 3 L.P., and 154 HarbourVest Skew Base AIF 4 LP. 5 And you're here to talk on 6 behalf of all of those entities, and you 7 have, for purpose of this settlement and 8 you're -- the 9019 motion, these proofs of 9 claim are all lumped together as one 10 claim; is that correct? 11 MS. WEISGERBER: I'm just going 12 to object quickly and clarify that 13 he's not here as a 30(b)(6) witness, 14 but he is here as someone from 15 HarbourVest who signed those proofs of 16 claim. So with that, I'll let you 17 continue. 18 A. I'll just answered the question, 19 yes, as a representative on behalf of all 20 of those entities. I would defer to 21 counsel, from a legal perspective, whether 22 these are treated as a single or separate 23 claims. 24 MR. WILSON: Okay. And we can 25 move on for now.</p>	Page 15
<p>1 Confidential - Pugatch 2 I'm going to submit the first 3 exhibit. It's going to be Exhibit 4 No. 1 to the deposition. I'm sending 5 it by E-mail, and I'm also going to 6 use a share screen. 7 (Whereupon, Exhibit 1, Proof of 8 Claim 143 filed 4/08/2020 nine pages, 9 was marked for identification.) 10 MR. WILSON: So this document 11 right here is Claim Number 143 filed 12 on April 8, 2020, and this one is 13 filed on behalf of HarbourVest 2017 14 Global Fund L.P. 15 If we go down, scroll to the 16 annex to proof of claim, it's Page 5 17 of the document. It says that the 18 Claimant is a limited partner in one 19 of the Debtor's managed vehicles, 20 Highland CLO Funding, Ltd. 21 And I'm going to now send out an 22 E-mail with Exhibit No. 2. I'm going 23 to pull this Exhibit No. 2 document up 24 on the share screen, as well. I guess 25 that's right.</p>	Page 16	<p>1 Confidential - Pugatch 2 (Whereupon, Exhibit 2, Proof of 3 Claim 149 filed 4/08/2020 nine pages, 4 was marked for identification.) 5 BY MR. WILSON: 6 Q. Can you see the official proof, 7 official form 410 proof of claim on your 8 screen? 9 A. The first one that you shared? 10 Q. I'm now on Exhibit No. 2. Is it 11 showing up on your screen? 12 A. No. 13 Q. Okay. Actually, I'm sorry. Is 14 it now showing up on your screen? 15 A. Now, it's showing up, yep. 16 Q. Okay. So this one is Proof of 17 Claim 149, filed on the same date. And 18 this one's filed on behalf HarbourVest 19 Partners L.P. And I'm going to scroll 20 down to the annex to proof of claim, which 21 looks largely like the annex to the 22 previous proof of claim we looked at. 23 But this one says, in Paragraph 24 No. 2, the Claimant manages investment 25 funds that are limited partners in one of</p>	Page 17

1 Confidential - Pugatch 2 the Debtor's managed vehicles, Highland 3 CLO Funding, Ltd. 4 And can you tell me why this 5 HarbourVest Partners L.P. filed a separate 6 proof of claim, from the entities that 7 were investors in HCLOF? 8 A. I would only be able to answer 9 that, based on conversations with counsel. 10 Q. But in any event, HarbourVest 11 Partners L.P. did not invest in HCLOF, 12 correct? 13 A. Not directly on behalf of 14 itself, no. 15 Q. All right. I'm going to stop 16 that share screen. 17 MR. WILSON: And this is going 18 to be Exhibit Number 3. 19 (Whereupon, Exhibit 3, 20 Declaration of Michael Pugatch in 21 Support of Motion of HarbourVest 22 Pursuant to Rule 3018(a), was marked 23 for identification.) 24 MR. WILSON: And Exhibit No. 3 25 that I've just submitted via E-mail,	Page 18	1 Confidential - Pugatch 2 and I'm about to put it up on the 3 screen, is the Declaration of 4 HarbourVest. Let me get it up here, 5 so you can see it. This is the 6 declaration of Michael Pugatch in 7 support of motion of HarbourVest 8 pursuant to Rule 3018(a). 9 BY MR. WILSON: 10 Q. Have you seen this document 11 before? 12 A. Yes. 13 Q. And, in fact, this is your 14 declaration; is that correct? 15 A. Yes. 16 Q. And at the first line of this, 17 of Paragraph 1 says that you're the 18 managing director of HarbourVest Partners 19 LLC? 20 A. Correct. 21 Q. And how is HarbourVest Partners 22 LLC connected to these claims? 23 A. That is the corporate entity or 24 managing member of all of the underlying 25 funds that are managed on behalf of	Page 19
1 Confidential - Pugatch 2 HarbourVest Partners L.P. 3 Q. And you're the managing director 4 of that entity? 5 A. A managing director to that 6 entity, yes. 7 Q. You said "a managing director," 8 are there others? 9 A. Yes. 10 Q. Who are the others? 11 A. There are over 50 managing 12 directors at HarbourVest Partners LLC. 13 Q. And are you the managing 14 director that has charge of this 15 particular HarbourVest investment, the one 16 in HCLOF? 17 A. Yes. 18 MR. WILSON: All right. I beg 19 your patience. I'm trying to conduct 20 this deposition solo. I've got a lot 21 of stuff I've got to go through. So 22 I'll do my best to do it efficiently. 23 But this next exhibit I'm going 24 to submit is going to be Exhibit No. 25 4. I'm sending it in the E-mail now.	Page 20	1 Confidential - Pugatch 2 (Whereupon, Exhibit 4, Member 3 Agreement 28 pages, was marked for 4 identification.) 5 BY MR. WILSON: 6 Q. Can you see this on your share 7 screen? 8 A. I can. 9 Q. This is the Members Agreement 10 relating to the Company. 11 A. (Nods.) 12 Q. I'm just going to scroll down. 13 Okay. So this is the signature page for 14 the HarbourVest entities that were 15 invested in this company. And it says 16 that you were the authorized person to 17 sign on behalf of the first two entities: 18 HarbourVest Dover Street, HarbourVest 2017 19 Global, and then the next one here it says 20 you're managing director. And here we see 21 that HarbourVest Partners LLC. 22 And if we scroll down, we see 23 that you're the managing director of 24 HarbourVest Partners LLC, again, on behalf 25 of HV International, and that you're an	Page 21

<p>1 Confidential - Pugatch 2 authorized person on behalf of HarbourVest 3 Skew Base. 4 So you signed all these 5 agreements on behalf of the HarbourVest 6 entities, when HarbourVest made its 7 investment in HCLOF. Would that be 8 correct? 9 A. Correct. 10 Q. Okay. Sorry that was 11 cumbersome, but I needed to get through 12 it. 13 MR. WILSON: I'm going to now 14 stop that share screen. And I'll need 15 to go to Exhibit No. 5. I'm E-mailing 16 out Exhibit No. 5 right now. 17 (Whereupon, Exhibit 5, 18 HarbourVest Response to Debtor's First 19 Omnibus Objection 617 pages, was 20 marked for identification.) 21 BY MR. WILSON: 22 Q. This is – I'll do another share 23 screen – this is Docket 1057 filed in the 24 Highland bankruptcy. And this is 25 HarbourVest Response to Debtor's First</p>	Page 22	<p>1 Confidential - Pugatch 2 Omnibus Objection. 3 Did you participate in the 4 creation of this document? 5 A. Yes. 6 Q. So you had an opportunity to 7 review this document, before it was filed? 8 A. Correct. 9 Q. And you agree with the 10 statements and the positions taken in this 11 document? 12 A. I do. 13 Q. All right. So what this says in 14 Paragraph 8, that by the summer of 2017, 15 HarbourVest was engaged in preliminary 16 discussions with Highland, regarding the 17 investment. 18 First off, why was HarbourVest 19 engaged in preliminary discussions with 20 Highland? 21 A. Highland had approached 22 HarbourVest with an investment 23 opportunity. This was really borne out of 24 discussions that we had with them around a 25 couple of investment opportunities, that</p>	Page 23
<p>1 Confidential - Pugatch 2 this opportunity with HCLOF being the one 3 that by the summer of 2017, as stated 4 here, was in, was advancing through 5 discussions. 6 Q. And which individuals at 7 Highland were you engaged in discussions 8 with? By "you," I mean HarbourVest. 9 A. Yeah, I mean, originally it was 10 through a couple of members of their 11 investor relations team. My first point 12 of contact was with Brad Eden, and then 13 subsequently progressed to a larger subset 14 of employees of Highland. 15 Q. And who on behalf of HarbourVest 16 was engaging in these discussions? 17 A. It was primarily myself, my 18 colleague, or two – two colleagues 19 primarily, alongside myself. 20 Q. I'm sorry. I didn't catch the 21 last part. 22 A. Sorry. Myself and two other 23 colleagues primarily. 24 Q. And who are these two other 25 colleagues?</p>	Page 24	<p>1 Confidential - Pugatch 2 A. Dustin Willard and then a more 3 junior member of the HarbourVest team. 4 Q. When you say "the HarbourVest 5 team," what does that mean? 6 A. So the broader investment team 7 and specifically in this context, the 8 secondary investment team at HarbourVest, 9 that this was an opportunity for. 10 Q. So who made the final decision, 11 on behalf of HarbourVest, to make this 12 investment? 13 A. Ultimately it was a decision 14 made by the investment committee of 15 HarbourVest. 16 Q. And who's on that investment 17 committee? 18 A. It's a four-member committee 19 comprised of managing directors within the 20 firm. 21 Q. And who are those managing 22 directors? 23 A. I don't recall at the time who 24 the members were. I can tell you the 25 members now, of that committee. It has</p>	Page 25

<p>1 Confidential - Pugatch 2 changed or evolved over time. 3 Q. And that committee included you? 4 A. I was involved in the 5 decisionmaking of that, yes, correct. 6 Q. So you were part of the four-man 7 committee that made this decision? 8 A. Yes. 9 Q. All right. I'm going to go back 10 to what we've marked as Exhibit 3, which 11 is your declaration. And it says in 12 Paragraph 2, that HarbourVest is a passive 13 minority investor in Highland CLO funds, 14 HCLOF, and by the way, I haven't stated 15 this before, but in this deposition if I 16 say HCLOF, I'm going to be referring to 17 Highland CLO funds. 18 But it says that the vehicle is 19 managed by Highland Capital Management, 20 L.P. 21 And why do you say that that 22 vehicle was managed by Highland Capital 23 Management, L.P.? 24 A. I believe that is the named 25 investment manager of HCLOF, per the</p>	Page 26	<p>1 Confidential - Pugatch 2 organization documents of that vehicle. 3 Q. You believe that that was the 4 investment manager on the organization 5 documents, which – 6 A. Of the various transaction 7 documents that we entered into, in 8 connection with our investment. 9 Q. Would those have been the 10 documents that you had entered on November 11 the 15 of 2017? 12 A. Yes. 13 Q. Okay. It says that HarbourVest 14 initially invested \$73,522,928 for roughly 15 49 percent interest in HCLOF; and more 16 specifically, that would be a 49.98 17 percent interest in HCLOF, correct? 18 A. Sounds right, yes. 19 Q. Okay. And then HarbourVest 20 contributed an additional \$4,998,501 21 following a capital call, and it's 22 received three dividends, each totally 23 \$1,570,429. 24 Is all of that correct? 25 A. Yes.</p>	Page 27
<p>1 Confidential - Pugatch 2 Q. And has HarbourVest received any 3 additional dividends, since the making of 4 this declaration? 5 A. No, we have not. 6 Q. Now, I want to skip down to 7 Paragraph 3, where it says that 8 HarbourVest expected proceeds from the 9 original HCLOF investment were projected 10 to exceed 135 million. 11 Do you agree with that? 12 A. That was the original projected 13 value of the investment, yes. 14 Q. Well, whose expectation was 15 that? 16 A. Those were figures, as I recall, 17 that were originally provided to us by 18 Highland to form the basis of our due 19 diligence that we went through, and 20 penultimately were included as part of our 21 investment thesis in making the 22 investment. 23 Q. So your testimony is that 24 Highland told you that your investment 25 would be worth over \$135 million?</p>	Page 28	<p>1 Confidential - Pugatch 2 A. Yes. 3 MS. WEISGERBER: Objection to 4 the form. Misstates testimony. 5 Go ahead, Mike. 6 A. That was, that was part of our 7 original due diligence, on the investment 8 opportunity. 9 Q. When you say part of your due 10 diligence, are you saying that the number 11 originated from Highland or that the 12 number originated from your due diligence 13 operations? 14 MS. WEISGERBER: Objection to 15 form. 16 A. The number originally came from 17 Highland and formed the basis upon which 18 we conducted due diligence on the 19 investment opportunity. 20 Q. And after performing due 21 diligence, you were satisfied that that 22 was a reasonable projection? 23 A. Yes. 24 Q. And what was the, what was the 25 estimated date, in which the value of your</p>	Page 29

<p>1 Confidential - Pugatch 2 investment would exceed the \$135 million? 3 MS. WEISGERBER: Objection to 4 form. 5 A. I don't recall exactly. That 6 would have been over, over several years. 7 And again, this was the -- this was the 8 projected value based on the original 9 investment or the assets that were held by 10 HCLOF, at the time of our investment. 11 Q. Now, when you talk about a 12 portfolio manager -- I'm sorry, when you 13 talk about investment manager, are you 14 referring to the portfolio manager? 15 A. No. 16 Q. So what's the difference in an 17 investment manager and a portfolio 18 manager? 19 A. So in the context of this 20 investment, the investment manager. We -- 21 we had -- HarbourVest had an investment 22 with HCLOF. Highland was the investment 23 manager of HCLOF that in turn held equity 24 positions in a variety of CLOs, which had 25 various portfolio managers associated with</p>	Page 30	<p>1 Confidential - Pugatch 2 those, all Highland affiliates. 3 Q. And so who was the portfolio 4 manager for the HarbourVest investment in 5 HCLOF? 6 MS. WEISGERBER: Objection to 7 form. 8 A. There were various underlying 9 portfolio managers, depending on the 10 underlying CLO position. 11 Q. Well, who was the initial 12 portfolio manager? 13 A. So, again it would depend on 14 which underlying assets we're talking 15 about. HCLOF was a diversified portfolio 16 of multiple underlying CLO equity 17 positions, all with portfolio managers 18 that were Highland affiliates, as we 19 understood it. 20 Q. Well, I'm going to go back to 21 Exhibit 1, Paragraph 2, this says, in the 22 second sentence, "Acis Capital Management 23 GP, LLC, and Acis Capital Management, 24 L.P., together Acis, the portfolio manager 25 for HCLOF," and then it continues on,</p>	Page 31
<p>1 Confidential - Pugatch 2 "filed for Chapter 11." 3 Is this proof of claim correct, 4 when it states that Acis Capital 5 Management GP, LLC, and Acis Capital 6 Management, L.P., were the portfolio 7 manager for HCLOF? 8 MS. WEISGERBER: Objection to 9 form. 10 A. I know that there was an issue 11 with the portfolio manager for at least 12 the Acis CLOs that were held by HCLOF. 13 Q. Well, how do you distinguish 14 between the Acis CLOs and the Highland 15 CLOs? Is that based on who was managing 16 them? 17 MS. WEISGERBER: Objection to 18 form. 19 A. Again, they were all underlying 20 investments of HCLOF. We didn't 21 distinguish the portfolio manager, if you 22 will, of those vehicles, other than again 23 they were Highland affiliates. 24 Q. But it's fair to say that Acis 25 was managing at least a portion of the</p>	Page 32	<p>1 Confidential - Pugatch 2 HCLOF investment, correct? 3 A. Correct. The underlying 4 investments held by HCLOF, correct. 5 Q. And did anything -- from the 6 time that you -- well, let's just go to 7 the -- I think we had the members 8 agreement up a second ago. This would 9 have been Exhibit 4. 10 Yeah, right here. No. 14, 11 Highland HCF Advisor, Ltd. is listed as 12 the portfolio manager on the members 13 agreement. 14 Is that accurate, that Highland 15 HCF Advisor, Ltd. was the portfolio 16 manager? 17 MS. WEISGERBER: Objection to 18 form. Can you state as of what date 19 you're asking, Counsel? 20 MR. WILSON: Well, the date of 21 this memorandum is, it says right 22 here, 15 November 2017. 23 BY MR. WILSON: 24 Q. So as of the date November 15, 25 2017, who was the portfolio manager for</p>	Page 33

<p>1 Confidential - Pugatch 2 this investment? 3 A. I don't recall the specific 4 names of the various entities that sat 5 below the HCLOF level or below Highland 6 Capital, as the investment manager of 7 HCLOF. 8 Q. Well, are you familiar with a 9 company called Brigade? 10 A. Yes. 11 Q. And was that company a 12 sub-manager of this investment? 13 MS. WEISGERBER: Objection to 14 form. 15 A. Not at the time of our 16 investment. 17 Q. Not at the time. Well, when did 18 the portfolio managers begin to change in 19 this investment? 20 MS. WEISGERBER: Objection to 21 form. 22 A. Do you mean subsequent to our 23 investment? 24 Q. Yes. 25 A. So as I understand it in</p>	Page 34	<p>1 Confidential - Pugatch 2 connection with the Acis bankruptcy that 3 took place, there was a change in the 4 underlying either portfolio manager of 5 certain of the CLOs, the Acis-managed CLOs 6 or Acis-branded CLOs, I should say, and/or 7 sub-advisor of those CLOs. 8 Q. And was that at the direction of 9 the Chapter 11 trustee? 10 MS. WEISGERBER: Objection. 11 A. That's my understanding. 12 Q. And so when this investment was 13 initially made, was Highland HCF Advisor, 14 Ltd. the portfolio manager of the entire 15 investment? 16 MS. WEISGERBER: Objection to 17 form. 18 A. I don't recall the specifics 19 underneath the HCLOF entity. 20 Q. Well, there aren't any other 21 portfolio managers listed on this 22 document, that I can see. 23 Is there any place in this 24 document that you can point me to that 25 would identify another portfolio manager?</p>	Page 35
<p>1 Confidential - Pugatch 2 MS. WEISGERBER: Objection to 3 form. The document speaks for itself. 4 A. Again, I think we may be 5 distinguishing here between portfolio 6 manager at the HCLOF level and portfolio 7 manager sub-advisor, again, I'm not sure 8 the proper terminology as it relates to 9 each of the underlying CLOs that were 10 partially owned by HCLOF. 11 Q. Well, after the Acis bankruptcy 12 was filed, and after the Chapter 11 13 trustee appointed Acis as a portfolio 14 manager of at least part of HCLOF, did 15 Highland HCF Advisor continue to serve as 16 portfolio manager? 17 MS. WEISGERBER: Objection to 18 form. 19 A. All of HarbourVest's interaction 20 was with Highland as the investment 21 manager of HCLOF. My understanding of the 22 change in those entities related to the 23 portfolio management of the underlying 24 Acis CLOs, not a change in the portfolio 25 manager, at the HCLOF level.</p>	Page 36	<p>1 Confidential - Pugatch 2 Q. Well, Highland is listed as a 3 member under this -- Highland Capital 4 Management LLP is listed as a member under 5 this Member Agreement; is that correct? 6 MS. WEISGERBER: Objection to 7 form. 8 A. If that's what the document 9 says, yes. 10 Q. I'm going to look -- let me stop 11 my share screen for a second. 12 All right. I'm now at the top 13 of Page 5 of this Exhibit 4, where it 14 says, "Dover IX shall mean HarbourVest 15 Dover Street IX Investment L.P." 16 And Dover IX was the largest 17 single investor of the HarbourVest Group; 18 is that correct? 19 A. Correct. 20 Q. All right. I'm now going to go 21 down to Paragraph 5. I'm sorry, it's not 22 Paragraph 5. Paragraph 4, where it says 23 "Composition of Advisory Board" in 24 Paragraph 4.1, The Company shall establish 25 an Advisory Board composed of two</p>	Page 37

1 Confidential - Pugatch 2 individuals, one of whom shall be a 3 representative of CLO Holdco and one of 4 whom shall be a representative of 5 Dover IX. 6 And did this Advisory Board get 7 created? 8 A. I believe it was created, yes. 9 Q. And who was the representative 10 for CLO Holdco on the Advisory Board? 11 A. I don't know. 12 Q. Who was the representative for 13 Dover IX on the Advisory Board? 14 A. I can't recall whether it was 15 myself or one other colleague who jointly 16 manages this investment with me. 17 Q. You don't recall if you were on 18 the Advisory Board? 19 A. The Advisory Board never met 20 formally under its capacity as an Advisory 21 Board. 22 Q. Well, if you look down in 23 Paragraph 4.3, I've got my mouse pointed 24 here, I don't know if you can see it. 25 About two-thirds of the way down in this	Page 38	1 Confidential - Pugatch 2 paragraph it says, "The consent of the 3 Advisory Board shall be required to 4 approve the following actions," and then 5 it lists a number of things. 6 Did the Advisory Board not have 7 to -- was it not required that the 8 Advisory Board ever meet, because they 9 didn't take any of these actions? 10 MS. WEISGERBER: Objection. 11 Objection to form. 12 A. There may have been one or two 13 actions taken by the Advisory Board, I'm 14 looking at the list here to see what those 15 may even have been, during the duration of 16 our investment; but if so, those would 17 have been written resolutions or written 18 consents, as opposed to any meeting that 19 was convened amongst the entire Advisory 20 Board. 21 Q. Okay. And the entire Advisory 22 Board is just two individuals, correct? 23 A. Correct, that's my 24 understanding. 25 Q. Okay. And if you go up a few	Page 39
1 Confidential - Pugatch 2 sentences above that in Paragraph 4.3 it 3 says, The portfolio manager shall not act 4 contrary to advice of the Advisory Board 5 with respect to any action or 6 determination expressly conditioned herein 7 or in the offering memorandum on the 8 consider approval of the Advisory Board. 9 So the portfolio manager did not 10 have the authority to disregard the advice 11 of the Advisory Board; is that correct? 12 MS. WEISGERBER: Objection to 13 form; misstates the document. 14 A. With respect to the limited role 15 that the Advisory Board would have to 16 play, yes, that would be my read. 17 Q. Now, what is your understanding 18 of a reset transaction? 19 A. Has to do with a refinancing and 20 reset of the investment period of an 21 underlying CLO. 22 Q. And would a reset transaction be 23 contained within this -- these actions 24 that the Advisory Board's consent is 25 required to approve?	Page 40	1 Confidential - Pugatch 2 A. No, it would not. 3 MS. WEISGERBER: Objection. 4 MR. MALONEY: Join. 5 Q. It would not? 6 A. It would not. 7 Q. Well, if a reset was to be 8 proposed, who would have the discretion to 9 make that decision to enter a reset 10 transaction? 11 MS. WEISGERBER: Objection to 12 form and foundation. 13 MR. MALONEY: Join. 14 A. That would be Highland as the 15 manager of HCLOF, who owns the equity 16 position to the underlying CLOs. 17 Q. So you're saying that Highland 18 would have the exclusive authority to 19 enter a reset transaction? 20 A. Correct. 21 MS. WEISGERBER: Objection to 22 form. 23 MR. MALONEY: Join. 24 Q. What if HarbourVest objected to 25 a reset transaction? Would it have any	Page 41

<p>1 Confidential - Pugatch 2 rights or remedies, in your understanding? 3 MS. WEISGERBER: I'm going to 4 object to form. And also just object 5 to the extent that this is calling for 6 legal conclusions. 7 Mike – 8 MR. WILSON: I've ask the 9 witness, within his understanding of 10 the way this investment worked. 11 MS. WEISGERBER: If you have an 12 understanding separate from any other 13 conversations with counsel, Mike, you 14 can certainly answer. 15 A. Within my understanding, 16 HarbourVest would not have had any ability 17 or rights to object to a reset or for 18 similar actions by Highland, as the 19 manager of the HCLOF. 20 Q. Okay. And just to, just for 21 clarity, in 4.2 it says that, All actions 22 taken by the Advisory Board shall be (i) 23 by a unanimous vote of all of the members 24 of the Advisory Board in attendance; or 25 (ii), by written consent in lieu of a</p>	Page 42	<p>1 Confidential - Pugatch 2 meeting signed by all of the members of 3 the Advisory Board. 4 And we've talked about how there 5 were two members, one of which represented 6 CLO Holdco and one of which represented 7 HarbourVest, and it was your testimony 8 that you don't recall a meeting ever being 9 conducted that you believed that there had 10 been some written consents issued by the 11 Advisory Board; is that correct? 12 MS. WEISGERBER: Objection to 13 form. 14 A. That is my recollection, yes. 15 Q. I'm sorry? I didn't hear your 16 answer. 17 A. That is my recollection, yes. 18 Q. Okay. So what is the Advisory 19 Board's general function in your 20 understanding? 21 MS. WEISGERBER: Objection to 22 form. 23 You can answer, Mike, if you 24 know, other than, you know, legal 25 conclusions, things like that, legal</p>	Page 43
<p>1 Confidential - Pugatch 2 advice. 3 And also, Mike, you're welcome 4 to look at the document, I think John 5 is E-mailing you the documents as 6 well. I don't know if you have the 7 full document in front of you. 8 THE WITNESS: Yeah, I can pull 9 it up here. 10 A. I mean, my understanding is the 11 Advisory Board, the Advisory Board's 12 involvement is as spelled as in Section 13 4.3 of the agreement that you have on the 14 screen. And that is the extent of the 15 role that the Advisory Board would play. 16 Q. Well, but as a practical matter, 17 what did that entail? 18 MS. WEISGERBER: Objection to 19 form. 20 A. Again, as a practical matter, 21 the listed items, which I can't see, that 22 are off the screen further down in 4.3 are 23 the items that would require approval by 24 the Advisory Board. 25 Q. But other than those items, the</p>	Page 44	<p>1 Confidential - Pugatch 2 Advisory Board was not a routine part of 3 the decision-making of the portfolio 4 manager? 5 MS. WEISGERBER: Objection to 6 form. 7 A. Not at all. 8 Q. Did you say "not at all"?</p> <p>9 A. Not at all, no. 10 Q. I'm going to refer back to 11 Exhibit 5, which was Document -- or Docket 12 1057. I'll put that back on the share 13 screen. I wanted you to scroll, sorry. 14 It's a long document. 15 I want you to look at 16 Paragraph 37, which should be on your 17 screen. And it says that these are 18 misrepresentations that HarbourVest 19 alleges were made by Highland. And the 20 first bullet point states that, "Highland 21 never informed HarbourVest that Highland 22 had no intention of paying the Arbitration 23 Award and was undertaking steps to ensure 24 that Mr. Terry could not collect on his 25 judgment."</p>	Page 45

<p>1 Confidential - Pugatch 2 Now, Mr. Terry did not have an 3 arbitration award against Highland; is 4 that correct? 5 MS. WEISGERBER: Objection to 6 form and foundation. 7 A. My understanding is there was an 8 Arbitration Award, awarded for the benefit 9 of Mr. Terry. 10 Q. But that award was against Acis, 11 correct? 12 MS. WEISGERBER: Objection to 13 form. 14 A. I don't know all of the details. 15 I do know that Acis was a subsidiary of 16 Highland, and there was an arbitration 17 award that was for the benefit of 18 Mr. Terry. 19 Q. But you would agree with me that 20 if, if Highland, or I'm sorry if Mr. Terry 21 had an arbitration award against Acis, 22 then Highland would not have any 23 obligation to pay that award? 24 MR. MORRIS: Objection to the 25 form of the question.</p>	Page 46	<p>1 Confidential - Pugatch 2 MS. WEISGERBER: Objection to 3 the form. Objection to the extent 4 that it calls for a legal conclusion. 5 I don't -- Mike, if you have a 6 layman's understanding of the answer 7 to that question, you're welcome to 8 answer. But if not, don't answer. 9 A. My understanding was Acis was a 10 controlled subsidiary of Highland's. 11 Q. Okay. Well, the next bullet 12 point says that, "Highland did not inform 13 HarbourVest that it undertook the 14 transfers to siphon assets away from Acis, 15 L.P., and that such transfers would 16 prevent Mr. Terry from collecting on the 17 Arbitration Award." 18 So if your understanding was 19 that Highland was responsible for the 20 arbitration award, then why is it relevant 21 that Highland siphoned assets away from 22 Acis, L.P.? 23 MS. WEISGERBER: Objection to 24 form. Misstates testimony. 25 Can you clarify that question,</p>	Page 47
<p>1 Confidential - Pugatch 2 John? I think the beginning of it was 3 a little muddled. 4 BY MR. WILSON: 5 Q. Well, this objection says that 6 Highland had -- or response to objection, 7 says that Highland had no intention of 8 paying the arbitration award, but that 9 seems to conflict with the next bullet 10 point that says that it undertook 11 transfers to siphon assets away from Acis, 12 L.P., to prevent Mr. Terry from collecting 13 on the arbitration award. 14 So where were those assets being 15 siphoned to? 16 MS. WEISGERBER: Objection to 17 form and foundation. 18 If you're capable of answering 19 that question, Mike, you can. 20 A. I don't know the specific 21 details of where those assets were 22 siphoned off to, other than it was to 23 another Highland affiliate. 24 Q. The next sentence says that, 25 "Highland simply did not inform</p>	Page 48	<p>1 Confidential - Pugatch 2 HarbourVest and represented to HarbourVest 3 that the reason for changing the portfolio 4 manager for HCLOF was because Acis was 5 toxic in the industry." 6 Do you see that? 7 A. Yes. 8 Q. And it seems when I read these 9 documents that have been filed in the 10 Highland bankruptcy, and also the Acis 11 bankruptcy, that there's a difference in 12 position as to which entity, being either 13 Highland or HarbourVest, had the belief 14 that the Acis name was toxic. Can you 15 shed any light on that? 16 MS. WEISGERBER: Objection to 17 form. 18 A. I can unequivocally say that the 19 idea to change the portfolio manager or 20 the idea that the Acis brand was toxic did 21 not come from HarbourVest. 22 Q. That was not at HarbourVest's 23 suggestion or insistence? 24 A. Absolutely not. 25 Q. Well, whose suggestion was it</p>	Page 49

<p>1 Confidential - Pugatch 2 that the Acis name was toxic? 3 A. Somebody at Highland. 4 Q. Do you know who? 5 A. I don't recall the conversation 6 where that first came up or who said, or 7 who at Highland said that. 8 Q. But that conversation did occur 9 prior to HarbourVest's investment? 10 A. Yes. 11 Q. So Acis was previously the 12 portfolio manager for HCLOF prior to 13 November 15, 2017, and now November 17 -- 14 or 15th, 2017, the portfolio manager was 15 changed. 16 And what is HarbourVest's 17 position as to why that change in 18 portfolio manager damaged it? 19 MS. WEISGERBER: Objection; 20 form, objection to the extent it calls 21 for a legal conclusion. 22 Mike, you can answer -- 23 MR. WILSON: I'm not asking for 24 a -- with all due respect, I'm not 25 asking for a legal conclusion. I'm</p>	Page 50	Page 51
<p>1 Confidential - Pugatch 2 to HarbourVest's investment, correct? 3 A. Correct. 4 Q. So HarbourVest had full 5 knowledge that that the portfolio manager 6 of HCLOF was being changed prior to its 7 investment, correct? 8 A. Correct. 9 MS. WEISGERBER: Objection to 10 form. 11 And just to clarify, you're 12 asking him, HarbourVest, he's 13 testifying on behalf of himself. I 14 could just take a standing objection 15 to that because I know sometimes 16 you're just saying HarbourVest meaning 17 Mike, so... 18 BY MR. WILSON: 19 Q. Okay. And just to be clear, 20 HCLOF changed its portfolio manager on 21 October 27, 2017, but after the Acis 22 bankruptcy was initiated the Chapter 11 23 trustee made changes to the portfolio 24 manager, correct? 25 MS. WEISGERBER: Objection to</p>	Page 52	Page 53
<p>1 Confidential - Pugatch 2 asking for his understanding why the 3 change in the portfolio manager 4 damaged HarbourVest. 5 MS. WEISGERBER: Same objection. 6 You can provide any 7 non-privileged answer that you have, 8 Mike, if any. 9 A. Ultimately my understanding is 10 that that change in portfolio manager and 11 the subsequent litigation between Acis, 12 Highland, and Josh Terry led to material 13 diminution in value, as it relates to the 14 underlying assets of HCLOF stemming from 15 Highland's decision not to comply with the 16 arbitration award to Mr. Terry. 17 Q. Okay. Now, if you go up to 18 Page 4 in this document, it says that on 19 October 27th, and this is Paragraph 11 20 now, "On October 27, 2017, Acis' portfolio 21 management rights for HCLOF were 22 transferred to Highland HCF"; is that 23 correct? 24 A. That sounds right, yes. 25 Q. And this is over two weeks prior</p>		

<p>1 Confidential - Pugatch 2 form. 3 A. I would just say Highland 4 presented that as facts to HarbourVest. 5 Q. Okay. And the next one, it says 6 that "Highland expressed confidence in the 7 ability of HCLOF to reset or redeem the 8 CLOs notwithstanding that Highland was 9 using HCLOF as part of its scheme to avoid 10 the pending Arbitration Award." 11 That's again an opinion, right, 12 that Highland expressed confidence in the 13 ability of HCLOF? 14 MS. WEISGERBER: Objection to 15 form. Objection to the extent it 16 calls for a legal conclusion. 17 A. Ultimately, their ability, or 18 HCLOF's ability to reset or redeem the 19 CLOs would be subject to market conditions 20 and the ability to actually affect those 21 transactions, but they expressed their, 22 you know, their belief or view in HCLOF's 23 ability to do that notwithstanding the, 24 that change in portfolio manager. 25 Q. Well, in Paragraph 39 on that</p>	<p>Page 54</p> <p>1 Confidential - Pugatch 2 same page, it says, "In reliance on 3 Highland's misrepresentations and 4 omissions, HarbourVest invested in HCLOF." 5 Now, HarbourVest is a 6 sophisticated investor, correct? 7 A. Correct. 8 Q. And if we were to go to 9 Paragraph 36, it says, right here in the 10 middle, "These facts were material: 11 indeed, HarbourVest expressed concern and 12 requested further information regarding 13 the Transfers, the Arbitration Award, and 14 their implications for HCLOF, and the 15 investment's closing date was delayed." 16 And the closing date was 17 ultimately November 15, 2017, correct? 18 A. Correct. 19 Q. What was the initial closing 20 date that had to be delayed? 21 A. I believe it was scheduled for 22 November 1st. 23 Q. So HarbourVest had full 24 knowledge of these facts that it, that it 25 lays out here forming the basis of the</p>	<p>Page 55</p>
<p>1 Confidential - Pugatch 2 alleged misrepresentations, and they 3 requested further information regarding 4 those facts. 5 Did they receive any further 6 information? 7 MR. MORRIS: Objection to the 8 form of the question. 9 MS. WEISGERBER: Objection to 10 form. Misstates testimony. 11 A. We did have subsequent 12 conversations and, I believe, receive 13 subsequent information describing the 14 intent around, and the, you know, new 15 structure, pro forma structure, of the 16 action that Highland had undertaken. And 17 part of the reason for the delay in the 18 closing was to ensure that we had adequate 19 time to diligence those changes, ask 20 questions, in connection with a thorough 21 due diligence process, and ensure that the 22 underlying legal structure was still 23 sound. 24 Q. And HarbourVest was investing 25 over \$73 million, correct?</p>	<p>Page 56</p> <p>1 Confidential - Pugatch 2 A. Right. 3 Q. And HarbourVest had made 4 investments of this nature previously, 5 correct? 6 A. We did. 7 MS. WEISGERBER: Objection to 8 form. 9 A. HarbourVest has made hundreds of 10 investment over its years, yes. 11 Q. And HarbourVest has conducted 12 due diligence regarding its investments in 13 the past, correct? 14 A. Correct. 15 Q. And HarbourVest received 16 additional information on items of concern 17 and reviewed that information and 18 satisfied itself that this was an 19 appropriate investment, correct? 20 MS. WEISGERBER: Objection to 21 form. Misstates testimony. 22 A. On the back of 23 misrepresentations by Highland, yes. 24 MR. WILSON: Well, I think 25 that's nonresponsive and I object.</p>	<p>Page 57</p>

1 Confidential - Pugatch 2 Q. I'm just, I'm just, reading from 3 your pleading that you filed in the 4 bankruptcy, where you say that these were 5 material facts, and HarbourVest sought 6 more information regarding these facts. 7 And then you've testified that they 8 performed additional due diligence 9 regarding that information they received, 10 and then they determined that the 11 investment was appropriate, correct? 12 MS. WEISGERBER: Objection to 13 form. Misstates testimony. 14 Go ahead, Mike. 15 A. Yeah, that is correct, on the 16 back of the additional information we 17 received from Highland. 18 And I would add, with, you know, 19 with the benefit of external advisors and 20 outside counsel reviewing those structural 21 changes, as well. 22 Q. All right. Thank you. 23 Now, going back to your 24 declaration, which we've marked as 25 Exhibit 3, Paragraph 3 says that "The	Page 58	1 Confidential - Pugatch 2 unaudited net asset value of HCLOF, as of 3 August 31, 2020, was \$44,587,820." 4 And is that a – is that a book 5 value, I guess? 6 A. That is a fair market value, in 7 accordance with the valuation policy of 8 HCLOF. 9 Q. Do you happen to know the net 10 asset value of HCLOF as of February 1, 11 2019? And I don't want an exact number, I 12 just want an approximation. 13 A. No, I do not. 14 Q. Do you know where I could get 15 that information? 16 A. Presumably from the Debtor. 17 Q. We'll come back to this in a 18 minute, but I'm going to – 19 MS. WEISGERBER: I think we've 20 been going about an hour, John, if we 21 can take a quick break. 22 MR. WILSON: Yeah, a break is 23 fine. 24 MS. WEISGERBER: Actually, 25 Mike...	Page 59
1 Confidential - Pugatch 2 MR. WILSON: I'm sorry? I 3 didn't hear you. 4 MS. WEISGERBER: It can be up to 5 Mike. 6 Mike, do you want to take a 7 quick break? Do you want to keep 8 going? 9 MR. WILSON: No, we can, if 10 y'all need a break, we can take a 11 break, like 10, 15 minutes. 12 THE WITNESS: Yeah, why don't we 13 take a break, please. 14 MR. WILSON: What do y'all 15 prefer? 10, 15? 16 MS. WEISGERBER: Ten minutes is 17 fine. 18 Mike, is that good with you. 19 THE WITNESS: Yeah, ten-minute 20 break is fine. 21 MR. WILSON: Okay. Well, we'll 22 break till, let's say, 1:20 central 23 time. 24 THE WITNESS: Perfect. 25 MR. WILSON: All right. Thanks	Page 60	1 Confidential - Pugatch 2 guys. 3 (Recess taken.) 4 MR. WILSON: Yes, I just sent 5 out an E-mail with Exhibit 6, and I'm 6 going to pull that up on the screen 7 share, as well. 8 (Whereupon, Exhibit 6, Offering 9 Memorandum 122 pages, was marked for 10 identification.) 11 BY MR. WILSON: 12 Q. All right. So this is the 13 Offering Memorandum, and I'm looking at 14 the bottom of Page 1 – I mean, the top of 15 Page 1, I'm sorry. 16 The Company that was being 17 invested in is Highland CLO Funding, Ltd. 18 Do you see that, Mr. Pugatch? 19 MS. WEISGERBER: Objection to 20 form. 21 A. I do. Okay. 22 Q. And then this document defines 23 Highland, as Highland Capital Management, 24 L.P. Do you see that? 25 A. Yes.	Page 61

<p>1 Confidential - Pugatch 2 Q. Okay. Now, if we go down to, I 3 guess it's Page 8 of this document, and 4 this first full paragraph at the top, it 5 says, "No voting member of the Advisory 6 Board shall be a controlled affiliate of 7 Highland." 8 Do you see that? 9 A. I do. 10 Q. And then it also says that, "It 11 being understood that none of CLO Holdco 12 Ltd., it's wholly-owned subsidiaries, or 13 any of their respective directors or 14 trustees shall be deemed to be a 15 controlled affiliate of Highland, due to 16 their preexisting non-discretionary 17 advisory relationship with Highland." 18 Do you see that? 19 A. Yes. 20 Q. So there were no affiliates of 21 Highland on the Advisory Board, correct? 22 MS. WEISGERBER: Objection to 23 form. 24 A. For voting purposes under the 25 document, that is how this reads, correct.</p>	Page 62	Page 63
<p>1 Confidential - Pugatch 2 form. 3 Q. And prior to the date of this 4 document, which I believe is November 15, 5 2017, CLO Holdco held 100 percent of the 6 shares of HCLOF, correct? 7 MS. WEISGERBER: Objection to 8 form, foundation. 9 A. I don't recall. I know they 10 were the largest, the largest investor. I 11 don't recall if it was 100 percent. 12 Q. Well, if you look at the chart 13 below Paragraph A, it says that CLO Holdco 14 Ltd. immediately prior to the placing on 15 100 percent share percentage. 16 Do you have any reason to 17 disagree with that? 18 A. No. 19 MS. WEISGERBER: Objection to 20 form. 21 Q. All right. Now, below CLO 22 Holdco Ltd., these are the five 23 HarbourVest entities that have filed 24 proofs of claim in this bankruptcy, 25 correct?</p>	Page 64	Page 65

<p>1 Confidential - Pugatch 2 correct. 3 Q. And 49.98 percent is larger than 4 the next largest shareholder, which is CLO 5 Holdco which is 49.02 percent, correct? 6 MS. WEISGERBER: Objection to 7 form. 8 A. In taking all of the HarbourVest 9 entities, collectively, yes, correct. 10 Q. And so I want to go back to 11 earlier where we saw in documents filed by 12 HarbourVest, where it refers to itself as 13 a passive investor. What do you, I 14 apologize if I've already asked you this 15 question, but what do you mean by passive 16 investor? 17 A. Meaning we were a minority 18 investor in HCLOF. HCLOF was fully 19 controlled by Highland as the investment 20 manager. So HarbourVest did not have any 21 governance, rights, or control as it 22 related to the ongoing investment 23 management and decisionmaking of HCLOF. 24 Q. HarbourVest has the largest 25 percentage of the shares of any of these</p>	Page 66	<p>1 Confidential - Pugatch 2 investors, correct? 3 MS. WEISGERBER: Objection to 4 form. 5 A. Taken collectively, yes. 6 Q. And HarbourVest owned one of the 7 two spots on the Advisory Board, correct? 8 MS. WEISGERBER: Objection to 9 form. 10 A. Correct. 11 Q. And if you look down below the 12 HarbourVest entities on this chart, you 13 see that Highland Capital Management, L.P. 14 is purchasing a .63 percent interest, 15 correct? 16 MS. WEISGERBER: Objection to 17 form. The document speaks for itself. 18 A. According to the document, yes. 19 Q. Do you have any reason to 20 disagree with that document? 21 MS. WEISGERBER: Objection to 22 form. 23 A. I do not. 24 MR. WILSON: All right. I'm 25 going to stop that screen share. I'm</p>	Page 67
<p>1 Confidential - Pugatch 2 going to E-mail out the next exhibit. 3 This was Exhibit 8 that I just sent, 4 and I'll pull it up on the screen 5 share. 6 (Whereupon, Exhibit 8, E-mail 7 08/15/2017, was marked for 8 identification.) 9 Q. Now, I'll represent to you that 10 I received this document this morning from 11 your counsel. Do you recognize this 12 E-mail? Have you seen it before? 13 A. Yes, I have. 14 Q. And this E-mail is sent by Brad 15 Eden. I think you mentioned that he was 16 one of the representatives that was 17 involved in the pre-investment discussions 18 with Highland? 19 A. Correct. 20 Q. And I think you told me that 21 Dustin Willard was involved in those 22 discussions on the HarbourVest side, 23 correct? 24 A. Correct. 25 Q. And so this is an E-mail sent on</p>	Page 68	<p>1 Confidential - Pugatch 2 August 15, 2017 from Brad Eden to Dustin 3 Willard. Are you familiar with Thomas 4 Surgent? 5 A. Yes. 6 Q. Was he involved in those 7 discussions with you and HarbourVest as 8 well? 9 A. In some of those discussions, 10 yes. 11 Q. Okay. So when it says, "Dustin, 12 attached is a legal summary. Of course, 13 Thomas is available to answer any 14 follow-up questions." Do you know if 15 Thomas was consulted with any follow-up 16 questions? 17 A. I recall -- 18 MS. WEISGERBER: Objection to 19 form. 20 A. -- having follow-up 21 conversations with Highland, I don't -- 22 around these legal summaries. I don't 23 recall with whom. 24 Q. Okay. And just to show you the 25 attachment that's referenced in the</p>	Page 69

1 Confidential - Pugatch 2 E-mail, this says that SEC financial 3 crisis matter crusader, Terry, Daugherty 4 and UBS. So and then I guess these are -- 5 this is information provided by Highland 6 to HarbourVest regarding these matters. 7 Why were these particular matters 8 addressed in this E-mail, to your 9 knowledge? 10 MS. WEISGERBER: Objection to 11 form and foundation. 12 A. These were all outstanding 13 litigation matters that we had become 14 aware of in connection with our diligence 15 that we asked for a further explanation 16 from Highland on the underlying substance. 17 Q. Now, did you become 18 independently aware of these in the course 19 of your due diligence, or were these 20 brought to your attention by Highland 21 first? 22 A. I don't know. 23 MS. WEISGERBER: Objection to 24 form. 25 Q. You don't know?	Page 70 1 Confidential - Pugatch 2 A. (Nods.) 3 Q. Okay. And particularly with 4 respect to Mr. Terry, is it your opinion 5 that there are any material 6 misrepresentations made in this summary? 7 MS. WEISGERBER: Objection to 8 form. Objection to the extent it 9 calls for a legal conclusion. 10 Mike, to the extent you have an 11 answer that does not infringe on 12 conversations with counsel, you can 13 provide it. 14 A. Yeah, I would say our 15 understanding or interpretation of that, 16 or the answer to that question would be 17 based on conversations with counsel. 18 Q. Well, this document was provided 19 to you in the course of the discussions 20 prior to HarbourVest's investment, and 21 you've stated that Highland, or you've 22 taken the position that Highland made 23 material misrepresentations to 24 HarbourVest, in the course of these 25 discussions.
1 Confidential - Pugatch 2 Does this document evidence 3 those material misrepresentations? 4 MS. WEISGERBER: Objection to 5 form. Objection to the extent it 6 calls for a legal conclusion. 7 A. Yeah, same answer as previous. 8 Q. Well, I'm not asking you for a 9 legal conclusion. I'm asking you are 10 there misrepresentations in this document 11 that you claim Highland made? 12 MS. WEISGERBER: Same 13 objections. 14 I think misrepresentations calls 15 for a legal conclusion regarding legal 16 misrepresentations, actionable 17 misrepresentations. So if he doesn't 18 have any non-privileged testimony to 19 give, he can't give any testimony. 20 MR. WILSON: Well, I'm here 21 today to investigate HarbourVest's 22 claim and one of the basis of 23 HarbourVest's claim is 24 misrepresentation. So I'm trying to 25 figure out what those	Page 72 1 Confidential - Pugatch 2 misrepresentations were. 3 And I would ask that the witness 4 tell me if there's a misrepresentation 5 in this document that was provided in 6 this E-mail. 7 MS. WEISGERBER: Same 8 objections. 9 Mike, if you have a general 10 understanding of, generally, 11 misrepresentations that HarbourVest 12 believes were made in connection or 13 regarding the Terry litigation, 14 et cetera, you can provide that 15 information. 16 THE WITNESS: Yeah, sure. 17 A. So in general, my understanding 18 and the way that Highland had 19 characterized the ongoing litigation with 20 Mr. Terry was that it was nothing more 21 than an employment dispute with a former 22 employee and that, you know, the 23 arbitration -- well, actually, it was 24 before the Arbitration Board, but the 25 ongoing litigation had no impact, bearing,

<p>1 Confidential - Pugatch 2 or ultimate result on the underlying CLOs 3 that Highland managed, including the Acis 4 CLOs. 5 Q. So you're saying that 6 Highland – 7 MR. MORRIS: John, I'm sorry to 8 interrupt. Before you go on, somebody 9 with the initials DSD just joined the 10 deposition. Can you please identify 11 yourself? 12 MR. DRAPER: This is Douglas 13 Draper. I just changed machines. 14 MR. MORRIS: Okay. No problem, 15 Doug. Thank you. 16 BY MR. WILSON: 17 Q. So, and I'm not trying to put 18 words in your mouth, but is the gist of 19 what you're telling me that Highland 20 represented that this was a minor dispute 21 with a former employee and it would not 22 affect its CLO business? 23 A. Correct. 24 MS. WEISGERBER: Objection to 25 form.</p>	Page 74	<p>1 Confidential - Pugatch 2 A. Correct. 3 Q. Well, are there any more 4 specific E-mails or written 5 communications, that you're aware of, that 6 would contain misrepresentations by 7 Highland to HarbourVest? 8 MS. WEISGERBER: Objection to 9 form. 10 Are you asking about from 11 today's production, or are you asking 12 about just, in general? 13 MR. WILSON: Well, you produced 14 two E-mails to us today. I'm just 15 asking if there's anything else he's 16 aware of where there's written 17 misrepresentations from Highland to 18 HarbourVest. 19 MS. WEISGERBER: Mike, if you 20 have an answer separate from 21 conversations with lawyers, et cetera, 22 you can certainly answer. 23 A. Yeah, my understanding of the 24 documents I reviewed that were part of the 25 production to you earlier today, there is</p>	Page 75
<p>1 Confidential - Pugatch 2 another document that would also include 3 misrepresentations on the part of this, 4 the Terry lawsuit and ultimate impact on 5 the CLO business. 6 BY MR. WILSON: 7 Q. And what document is that? 8 A. That was the E-mail, E-mail with 9 an attachment around a response to a Wall 10 Street Journal article and some of the 11 content in the E-mail itself. 12 Q. Okay. We'll look at that one. 13 What was the -- HarbourVest had 14 seen the Terry Arbitration Award, correct? 15 MS. WEISGERBER: Objection to 16 form. 17 Q. Prior to making its investment 18 in HCLOF? 19 A. We were aware of the existence 20 and the outcome of the Arbitration Award. 21 Q. Had you read the Arbitration 22 Award? 23 A. No. 24 Q. Well, how did you know the 25 substance of the Arbitration Award without</p>	Page 76	<p>1 Confidential - Pugatch 2 reading it? 3 MS. WEISGERBER: Objection to 4 form. 5 A. We were informed by Highland of 6 the outcome of the ongoing litigation and 7 the outcome of the Arbitration Award. 8 Q. Was that part of the 9 documentation that you requested Highland 10 provide you to continue your due 11 diligence, before making the investment? 12 MS. WEISGERBER: Objection to 13 form. 14 A. We certainly requested more 15 color around the outcome of that, and any 16 impact that it could have to HCLOF or the 17 ongoing viability of Highland's CLO 18 business. 19 Q. And what, what were you provided 20 with respect to the Terry Arbitration 21 Award? 22 MS. WEISGERBER: Objection to 23 form. 24 A. The existence of that award, the 25 quantum of that award, the judgment of</p>	Page 77

	Page 78	Page 79
1 Confidential - Pugatch 2 just under \$8 million in connection with 3 that award. That was the information that 4 was disclosed at -- and represented as a 5 settlement or, you know, arbitration 6 ruling, in connection with the employee 7 litigation, wrongful termination suit. 8 Q. So did HarbourVest not request a 9 copy of the Arbitration Award to review? 10 MS. WEISGERBER: Objection to 11 form. 12 A. We did not specifically, no. 13 Q. And so, to this day, have you 14 read the Arbitration Award? 15 A. I have not. 16 MS. WEISGERBER: Objection to 17 form. 18 Q. You have not? 19 A. I have not. 20 MR. WILSON: Okay. I think my 21 last E-mail went out with Exhibit 9 on 22 it. I will pull that up. 23 Q. Can you see that on the screen 24 share? 25 A. Yes.	1 Confidential - Pugatch 2 (Whereupon, Exhibit 9, 3 11/29/2017 E-mail with cover letter 4 Highland Capital Management, was 5 marked for identification.) 6 Q. Okay. So I think this is out of 7 order, but this should have been first in 8 the exhibit. But this is an E-mail from 9 Hunter Covitz to Dustin Willard, Michael 10 Pugatch and Nick Bellisario, carbon copies 11 to Trey Parker and Brad Eden. 12 And Trey Parker and Brad Eden 13 are Highland affiliates, right? 14 A. Yes. 15 Q. And we've talked about Dustin 16 Willard. Who's Nick Bellisario? 17 A. He was another member of the 18 HarbourVest team. 19 Q. And was he on the, the 20 four-member board that you talked about 21 earlier, that made the investment 22 decision? 23 A. No, he was the junior member of 24 the investment team that I alluded to. 25 Q. Okay. And this, this E-mail	
1 Confidential - Pugatch 2 came out about two weeks after the 3 HarbourVest investment, correct? 4 A. Correct. 5 Q. And it's your opinion or 6 position that this E-mail contains 7 misrepresentations that Highland made to 8 HarbourVest? 9 MS. WEISGERBER: Objection to 10 form. Objection to the extent it 11 calls for a legal conclusion. 12 A. Yes. 13 Q. And there was a Wall Street 14 Journal article that had come out shortly 15 before this E-mail, correct? 16 A. Correct. 17 Q. And how did you became aware of 18 that Wall Street Journal article? 19 A. I certainly would have seen it. 20 I may have been sent it separately by 21 Highland, I don't recall. 22 Q. You don't recall if you saw it 23 independently or Highland telling you 24 about it? 25 A. I don't.	Page 80	Page 81 1 Confidential - Pugatch 2 Q. And what did you -- what was 3 your reaction to receiving these E-mails 4 from Highland regarding that article? 5 MS. WEISGERBER: Objection to 6 form. 7 A. The article or the accusations 8 in the article were something that 9 required more explanation from our 10 perspective. 11 Q. And attached to this E-mail 12 was -- we just scrolled through it a 13 second ago -- but a letter from James 14 Dondero that was sent to the 15 editor-in-chief of the Wall Street 16 Journal, Mr. Gerard Baker, on November 17 28th. 18 And did you read this 19 attachment? 20 A. Yes. 21 Q. And did this attachment to this 22 E-mail aleve your concerns that you had 23 regarding the article? 24 MS. WEISGERBER: Objection to 25 form.

<p>1 Confidential - Pugatch 2 A. I wouldn't say alleviated the 3 concerns but certainly provided an 4 explanation or refute to some of the 5 claims made in the, in the article. 6 Q. And do you contend that this 7 letter that was written to Gerard Baker 8 and provided later to HarbourVest was a 9 material misrepresentation?</p> <p>10 MS. WEISGERBER: Objection to 11 form. 12 Don't answer that, Mike. It 13 calls for a legal conclusion. 14 MR. WILSON: I'm asking for his 15 understanding. 16 Q. Do you contend that there's 17 misrepresentations in this letter? 18 MS. WEISGERBER: Material 19 misrepresentations absolutely calls 20 for a legal conclusion, John. 21 MR. WILSON: Well, I've 22 shortened it to misrepresentations. 23 So I just want to know if he thinks 24 there's anything that's misrepresented 25 in this letter.</p>	Page 82	<p>1 Confidential - Pugatch 2 MS. WEISGERBER: Same 3 objections. 4 Mike, if you have an 5 understanding, separate from 6 conversations with lawyers, you can 7 answer. 8 A. I would need to reread the 9 letter to definitively answer that outside 10 of conversations with counsel. 11 Q. But to be clear, this letter was 12 issued two weeks after HarbourVest's 13 investment, correct? 14 A. Correct. 15 MS. WEISGERBER: Objection; 16 asked and answered. 17 MR. WILSON: I'm going to now 18 send out the next exhibit, which is 19 going to be Exhibit No. 10. 20 (Whereupon, Exhibit 10, 2004 21 Examination of Investor in Highland 22 CLO Funding Ltd. 10/10/2018, was 23 marked for identification.) 24 MR. WILSON: It just went 25 through. So I'm going to pull it up</p>	Page 83
<p>1 Confidential - Pugatch 2 on my screen share. 3 So this Exhibit 10, the document 4 I received this morning, filed in the 5 Acis bankruptcy, it looks like, well, 6 let's see, dated in, dated October 10, 7 2018. 8 BY MR. WILSON: 9 Q. Have you seen this document 10 before? 11 A. Yes. 12 Q. And it's a motion for 2004 13 Examination of Investor in Highland CLO 14 Funding, Ltd., correct? 15 A. Sorry. Was there a question, 16 John? 17 Q. Yeah. I was just asking you to 18 confirm that this was the motion for 2004 19 Examination of Investor in Highland CLO 20 Funding? 21 A. Yes. 22 Q. And so if I scroll down to 23 Paragraph 6, which is on, it looks like 24 it's on Page 4. In the second sentence, 25 it says that "Although HCLOF/ALF was a one</p>	Page 84	<p>1 Confidential - Pugatch 2 time wholly-owned by an affiliate of 3 Highland, it did an offering memorandum in 4 November of 2017 and as a result, is now 5 owned 49.985% by certain affiliates of a 6 large investor and manager of private 7 equity funds." 8 And that's defined as investor. 9 So the Investor is the HarbourVest 10 entities collectively, correct? 11 A. Correct. 12 Q. All right. And then the next 13 sentence, says that "Despite its large 14 ownership percentage in HCLOF in the 15 alleged millions in losses that will 16 result if the Acis CLOs are not reset to 17 make them consistent with prevailing 18 market conditions the Investor has not yet 19 appeared in this case or taken any 20 position in this bankruptcy case." 21 Do you see that? 22 A. I do. 23 Q. Is that correct? 24 MS. WEISGERBER: Objection to 25 form.</p>	Page 85

	Page 86	Page 87
1 Confidential - Pugatch 2 A. Is what correct? 3 Q. Well, I guess, I'm most 4 concerned with this last part of the 5 sentence. It starts with "The Investor 6 has not yet appeared in this case or taken 7 any position in the bankruptcy case." 8 Do you agree with that? 9 MS. WEISGERBER: Objection to 10 form. 11 Mike, if you want to look at the 12 whole document, you're welcome to. 13 This is not a document that's a 14 HarbourVest-prepared document. 15 BY MR. WILSON: 16 Q. Maybe a better way of asking the 17 question is: As of the date of this 18 document, which was in October of 2018, 19 had HarbourVest appeared in the Acis 20 bankruptcy? 21 A. No, we did not. 22 Q. And had they asserted any 23 positions regarding the Acis bankruptcy? 24 A. Not through the court. 25 MS. WEISGERBER: Objection to	1 Confidential - Pugatch 2 form. 3 Q. Okay. Had Highland encouraged 4 HarbourVest to participate in the Acis 5 bankruptcy? 6 MS. WEISGERBER: Objection to 7 form. 8 A. No. 9 Q. They did not? 10 MS. WEISGERBER: Objection to 11 form. 12 Q. Highland did not encourage 13 HarbourVest to participate in the Acis 14 bankruptcy? 15 A. When you say "participate," can 16 you define that, please. 17 Q. Well, appear in the case, as 18 stated in this motion. 19 A. No, they had not. 20 Q. Did Harbour - I'm sorry - did 21 Highland keep HarbourVest apprised of the 22 events that occurred in the Acis 23 bankruptcy? 24 MS. WEISGERBER: Objection to 25 form. I'm just going to restate my	
1 Confidential - Pugatch 2 objection to the extent you're asking 3 questions about HarbourVest. This is 4 Mr. Pugatch answering, based on his 5 knowledge. 6 A. We were kept informed from time 7 to time throughout the Acis bankruptcy 8 proceeding. 9 Q. Well, did you, in fact, have 10 weekly conference calls with Highland 11 representatives regarding the Acis 12 bankruptcy? 13 MS. WEISGERBER: Objection to 14 form. 15 A. I don't recall them being 16 weekly, no. 17 Q. You can agree with me you 18 participated in the conference calls with 19 Highland regarding the Acis bankruptcy? 20 A. Yes. 21 MS. WEISGERBER: Same objection. 22 Q. And on what, on what - 23 MR. WILSON: Sorry. Strike 24 that. 25 Q. With what regularity would you	Page 88	Page 89

<p>1 Confidential - Pugatch 2 directly relates to the claims that 3 HarbourVest has made. But I'll repeat 4 my question. 5 BY MR. WILSON: 6 Q. Did Highland provide HarbourVest 7 with documents and evidence that were 8 filed in the Acis bankruptcy? 9 MS. WEISGERBER: Objection to 10 form. 11 A. I don't recall what documents 12 Highland may have provided to us, at that 13 point in time. 14 Q. I don't want you to recall 15 specific documents that were provided, but 16 did, did Highland provide documents from 17 the Acis bankruptcy to HarbourVest? 18 MS. WEISGERBER: Objection to 19 form. Asked and answered. 20 A. I don't recall. 21 Q. You don't recall? 22 A. (Nods.) 23 Q. Would you dispute that between 24 2018 and 2019 that Highland provided over 25 40,000 pages of documents related to the</p>	Page 90	Page 91
<p>1 Confidential - Pugatch 2 A. Yes. 3 Q. Now, I'm going to go back up to 4 Paragraph 2. This says that Acis LP 5 manages the Acis CLOs, that certain 6 portfolio management agreement between 7 Acis, and then it goes on. So what are 8 the Acis CLOs, as it relates to the 9 investment that HarbourVest made? 10 MR. MALONEY: Objection to the 11 form of the question. 12 MS. WEISGERBER: Objection to 13 form. 14 A. The Acis CLOs -- or HCLOF owned 15 equity in certain of the Acis CLOs as a 16 portion of its investment portfolio. 17 Q. And I think you were trying to 18 distinguish earlier between who the 19 portfolio manager was. And that would 20 depend on whether it was an Acis CLO or a 21 Highland CLO; is that correct? 22 MR. MALONEY: Objection to form. 23 MS. WEISGERBER: Objection to 24 form, misstates testimony. 25 A. I was referencing the portfolio</p>	Page 92	Page 93

<p>1 Confidential - Pugatch 2 form and foundation. 3 MR. MALONEY: Mark Maloney. 4 Object to form and foundation. 5 A. I don't know. You'd have to ask 6 William Scott. 7 Q. Well, were you aware, I mean, 8 there's a citation to a, well, I don't 9 know if there's a citation on this one. 10 But it says that he recently testified. 11 Were you aware that he testified that he 12 wanted to reset the Acis CLOs? 13 MS. WEISGERBER: Same objection. 14 We're really getting far afield. 15 MR. WILSON: I'm just asking if 16 he was aware that this statement 17 occurred. 18 A. At some point in time, yes, I 19 became aware of that. 20 Q. Okay. Do you agree that the 21 inability to do a reset was causing 22 damages in the amount of \$295,000 per 23 week? 24 MS. WEISGERBER: Objection to 25 form and foundation. This is not a</p>	Page 94	Page 95
<p>1 Confidential - Pugatch 2 information regarding whether the Investor 3 presently has any concerns about pursuing 4 reset transactions with the Reorganized 5 Acis and Brigade, under the plan now that 6 Acis has been able to successfully serve 7 as the portfolio manager for the Acis CLOs 8 on a post-petition basis, and there are no 9 impediments to the ability of the 10 Reorganized Acis and Brigade to pursue a 11 reset on the Acis CLOs." 12 Do you know whether the Investor 13 had any concerns about pursuing a reset? 14 MS. WEISGERBER: Objection to 15 form, foundation. 16 A. The context of a reset or 17 refinancing of the various CLOs in HCLOF 18 was part of the original investment 19 thesis. So there would not have been 20 concerns about the ability to do so. Our 21 concerns were more in the inability to do 22 so, as a result of the Acis bankruptcy. 23 Q. But here, you've got the Trustee 24 representing in Paragraph 5, that 25 according to the Trustee's Second Amended</p>	Page 96	Page 97

1 Confidential - Pugatch 2 cannot conceive how this is relevant 3 to the 9019 motion before the court 4 right now. 5 Nonetheless, Mike, if you have 6 an answer, on behalf of yourself, you 7 can answer. 8 A. HarbourVest was a passive 9 minority investor in HCLOF. It had no 10 ability to control the underlying 11 portfolio management or ability to reset, 12 refinance, or call in any of the equity of 13 the underlying CLOs. That was all under 14 the purview of Highland. 15 Q. Did you understand that 16 Mr. Ellington had given sworn testimony 17 that the Investor is the party calling the 18 shots for HCLOF, with respect to any reset 19 transactions? 20 MS. WEISGERBER: Objection to 21 form. 22 A. I did became aware of it, yes. 23 Q. When did you become aware of 24 that? 25 A. At some point subsequent to that	Page 98 1 Confidential - Pugatch 2 testimony being given. 3 Q. But was it when you read this 4 motion that we're looking at as 5 Exhibit 10? 6 MS. WEISGERBER: Objection to 7 form. 8 A. It may have been. I don't 9 recall the exact time or medium that I 10 became aware of that. 11 Q. Was a deposition given as a 12 result of this motion? 13 MS. WEISGERBER: Objection to 14 form. If you have the whole document, 15 Mike, that may make sense. 16 MR. WILSON: Well, this motion 17 at the top says it's a Motion for 2004 18 Examination of Investor. And then 19 attached to this motion are some 20 document requests, and then deposition 21 topics for a corporate representative 22 of the Investor, and then a proposed 23 order. 24 BY MR. WILSON: 25 Q. Do you recall whether a	Page 99
1 Confidential - Pugatch 2 deposition was given, after this motion 3 was filed? 4 A. Yes. 5 Q. And who was the designated 6 deponent? 7 A. I was. 8 Q. And were documents produced, as 9 a result of this? 10 A. Yes, there were. 11 Q. And were you asked at that 12 deposition what the Investor's position on 13 a reset was? 14 MS. WEISGERBER: Objection to 15 form. 16 If you recall. 17 A. I don't recall specifically that 18 question being asked. 19 Q. Well, do you know what 20 the Debtor's position – I'm sorry, the 21 Debtor's – the Investor's position on a 22 reset was as of that day? 23 MS. WEISGERBER: Objection to 24 form. Asked and answered. 25 A. I would just say again, in	Page 100 1 Confidential - Pugatch 2 general, the original investment thesis 3 here was predicated on a refinancing reset 4 of the various CLOs, and we were not in 5 control as a passive minority investor 6 here to – 7 Q. Well, you said you weren't in 8 control, but what would HarbourVest's 9 preference have been? 10 MS. WEISGERBER: Objection to 11 form. 12 A. I do not recall. 13 MS. WEISGERBER: If you recall. 14 A. I don't recall the specifics 15 around what Acis CLO were referring to 16 here or what the specific implications of 17 a reset were at that time; but regardless, 18 that was a decision for the investment 19 manager of HCLO. 20 Q. But was it your opinion, your 21 personal opinion, that a reset was 22 appropriate? 23 MS. WEISGERBER: Objection to 24 form. 25 A. Again, we were not the portfolio	Page 101

1 Confidential - Pugatch 2 manager of HCLOF. We were not in control 3 of those decisions or making 4 recommendations on those decisions. That 5 was the delegated authority of Highland, 6 as the investment manager. 7 Q. I'm not asking for that. I'm 8 asking for your personal feelings toward a 9 reset. 10 MS. WEISGERBER: Same objection. 11 He's only answering on behalf of 12 himself, and it's been asked and 13 answered three times since. 14 MR. WILSON: Well, he hasn't 15 answered the question. He's just told 16 me they don't have the authority to do 17 the reset. 18 MS. WEISGERBER: And he told you 19 the other information he'd be required 20 to even have an opinion on it. So 21 same objection stands. It's not a 22 specific enough question for him. 23 Mike, you're welcome, if you 24 have, if you have an answer, you're 25 welcome to give it.	Page 102	1 Confidential - Pugatch 2 A. Yeah, the investment guidelines 3 of HCLOF, from the documents that we 4 signed at the time we entered into the 5 transaction, laid out the specific, again, 6 investment guidelines that HCLOF would be 7 guided under, including the opportunity to 8 refinance or reset various CLOs over time, 9 in accordance with Highland's, you know, 10 expectations and ultimate decision to do 11 so. 12 Q. But did you believe, at this 13 time, that a reset was appropriate? 14 MS. WEISGERBER: Objection to 15 form. This is asked and answered 16 several times now, I think we should 17 move on. He's given you an answer. 18 MR. WILSON: Well, I want to 19 know what his personal opinion was 20 about whether the reset was 21 appropriate. 22 A. What reset are you referring to? 23 Q. A reset as of October 10, 2018. 24 At that time, did you believe that a reset 25 was appropriate?	Page 103
1 Confidential - Pugatch 2 A. A reset of what? 3 MS. WEISGERBER: Same objection. 4 Q. A reset as been discussed all 5 through this motion, the same reset we're 6 talking about. 7 MS. WEISGERBER: Objection. 8 Same objections. I just don't see how 9 he could possibly answer this vague 10 question. 11 Q. Okay. So William Scott, 12 director of HCLOF, testified that he 13 wanted to reset the Acis CLOs because if 14 they don't, they are losing \$295,000 a 15 week. 16 Did you think that a reset was 17 appropriate in line with what Mr. Scott 18 believed? 19 MR. MALONEY: Objection to form, 20 foundation. 21 MS. WEISGERBER: Same 22 objections. And asked and answered 23 numerous times. 24 A. We were not managing the 25 portfolio. We were an investor in a	Page 104	1 Confidential - Pugatch 2 company, an investment company that was 3 managing this. We were not, I was not 4 proximate enough to any of the underlying 5 happenings of the look through CLO 6 positions of HCLOF to have an informed 7 view on this, at this time. 8 Q. Is your testimony that you did 9 not have an opinion as to whether the Acis 10 CLO should be reset in late 2018? 11 MS. WEISGERBER: Objection to 12 form. Misstates testimony. 13 A. My view is that the original 14 investment guidelines here called for a 15 reset or refinance of the CLOs and that 16 Highland was subsequently in full control 17 of whether or not to pursue this, and we, 18 HarbourVest, as an investor had no ability 19 to object or to force that on a go-forward 20 basis. 21 MR. WILSON: Objection. 22 Nonresponsive. 23 Q. I want to know your personal 24 opinion of whether you thought a reset was 25 appropriate in October of 2018.	Page 105

1 Confidential - Pugatch 2 MR. MORRIS: Objection to the 3 form of the question. That's been 4 asked and answered. 5 MR. WILSON: He has yet to give 6 his answer to – 7 MR. MORRIS: He just told you he 8 didn't have enough information. He 9 just told you that, crystal clear. 10 MR. WILSON: Well, I'm not going 11 to argue with you, John, but I just 12 want an answer to my question. 13 His answer, he wouldn't agree 14 with my, with my summation that he had 15 no opinion, so I just want to know 16 what his opinion is. 17 MS. WEISGERBER: Same 18 objections. 19 You're not giving him enough 20 information to answer the question, 21 and at this point, it would be 22 speculation. We can just keep going 23 in circles on this, but your – 24 MR. WILSON: His opinion would 25 be speculation?	Page 106	Page 107
1 Confidential - Pugatch 2 A. I do not believe that any of the 3 Acis CLOs were ever reset. 4 Q. All right. So who negotiated 5 this claim, the settlement of this claim 6 on behalf of HarbourVest? 7 A. I did. 8 Q. And who negotiated for the 9 Debtor? 10 A. Jim Seery. 11 Q. And when did those negotiations 12 begin? 13 A. It started sometime in November, 14 I believe. 15 Q. And are you aware that Jim Seery 16 has ever taken the position that the 17 HarbourVest claim was worthless? 18 MS. WEISGERBER: Objection to 19 form, foundation. 20 A. No, I'm not aware of that. 21 Q. Has Jim Seery ever offered 22 \$5 million to settle the HarbourVest 23 claim? 24 A. Not to my knowledge. 25 MS. WEISGERBER: Objection to	Page 108	Page 109

<p>1 Confidential - Pugatch 2 claim, and a \$35 million subordinated 3 claim. 4 And then Part B of that 5 paragraph states that HarbourVest is going 6 to transfer all its rights, titles, and 7 interests to its investment in CLOF to the 8 Debtor or its nominee. 9 Is that your understanding of 10 the general terms of this settlement? 11 MS. WEISGERBER: Objection to 12 form. 13 A. Yes, it is. 14 Q. Okay. And also in Paragraph 5, 15 Each HarbourVest party agrees that it will 16 vote all of HarbourVest claims held by 17 such HarbourVest party to accept the plan. 18 And I won't read all of that. 19 But the gist of this paragraph is that 20 HarbourVest is going to vote for the 21 Debtor's proposed plan; is that correct? 22 MS. WEISGERBER: Objection to 23 form. 24 A. Yes, correct. 25 Q. And how did that term come to be</p>	Page 110	Page 111
<p>1 Confidential - Pugatch 2 MR. WILSON: I'm going to take a 3 ten-minute break, and I think I'm 4 almost ready to wrap up. So I want to 5 stop my screen share. And let's, 6 well, let's start back at 2:30, and I 7 think I'll be quick. Thank you. 8 (Recess taken.) 9 BY MR. WILSON: 10 Q. Mr. Pugatch, earlier you 11 testified that consistent with your 12 declaration you filed that as of August 13 31, 2020, the value of HCLOF was 14 \$44.5 million. And then if we look at – 15 I don't remember which – 16 Okay. So this would have been 17 Exhibit 7. I'll do a share screen. 18 As of November 15, 2017 these 19 shares were purchased at \$1.02 and change 20 apiece, and there were a total number of 21 143 million shares. 22 Was the value of this investment 23 roughly \$150 million, as of November 15, 24 2017? 25 MS. WEISGERBER: Objection to</p>	Page 112	Page 113

<p>1 Confidential - Pugatch 2 underlying CLOs that was part of the 3 original investment thesis here, largely 4 as a result of the ongoing litigation, 5 that Highland was involved in, and the 6 subsequent Acis bankruptcy. 7 Q. And so during the period of time 8 when the injunction prohibited certain 9 actions with respect to this investment, 10 is it your opinion that this investment 11 was losing value? 12 MR. MALONEY: Objection. 13 MS. WEISGERBER: Objection to 14 form. 15 A. Can you repeat the question, 16 John? 17 Q. Well, I guess I want to know, 18 like, in a, on a timeline kind of basis, 19 do you think that the significant 20 reduction of value occurred prior to or 21 after the confirmation of the Acis plan on 22 February 1, 2019? 23 MS. WEISGERBER: Objection to 24 form. Objection to the extent it 25 calls for a legal conclusion.</p>	<p>Page 114</p> <p>1 Confidential - Pugatch 2 You can give your lay opinion, 3 if you have one, Mike. 4 A. I think it's all been as a 5 result of the events leading up to the 6 Acis bankruptcy, including the inability 7 to refinance or reset the CLOs which would 8 have been to the benefit of the CLO equity 9 holders including HCLOF. 10 Q. And so what, what was the cause 11 of the inability to reset? 12 MS. WEISGERBER: Same 13 objections: form, foundation, legal 14 conclusion. 15 If you have a non-privileged 16 answer, Mike, go ahead. 17 A. Yeah, my understanding was 18 originally the TRO, preventing Highland 19 and HCLOF from pursuing that, and then 20 subsequent to the Acis bankruptcy ruling, 21 a similar injunction that remained around 22 the inability for the equity holders of 23 those CLOs to redeem or refinance or 24 reset. 25 Q. So do you – is there any</p>	<p>Page 115</p>
<p>1 Confidential - Pugatch 2 component, in your opinion, of the loss of 3 value of these investments due to 4 portfolio mismanagement? 5 MS. WEISGERBER: Objection to 6 form, foundation, legal conclusion, or 7 expert opinion, calling for 8 speculation. 9 If you have a view, Mike. 10 A. Yeah. Can you be more specific 11 with the question, John? 12 Q. Well, I'll ask it a different 13 way. 14 Do you think that portfolio 15 mismanagement was a portion of the cause 16 of the reduction in value? 17 MS. WEISGERBER: Same objection. 18 A. I can't speculate as to, you 19 know, the underlying management decisions 20 around the CLOs, but what I do know is 21 that the mismanagement and 22 misrepresentations at the HCLOF level, 23 that would ultimately result in the Acis 24 bankruptcy and subsequent to that, the TRO 25 and the inability to refinance or reset</p>	<p>Page 116</p> <p>1 Confidential - Pugatch 2 that has been the, far and away, the 3 largest contributor to loss of value 4 within the portfolio. 5 Q. One of the allegations that 6 HarbourVest has made is that Highland 7 improperly changed the portfolio manager. 8 Is it your opinion that if that had not 9 been done, the portfolio manager had not 10 been changed at the inception of 11 HarbourVest's investment, that that would 12 have preserved any value of this fund? 13 MR. MORRIS: Objection to the 14 form of the question. 15 MS. WEISGERBER: Same objection. 16 Calling for speculation, hypothetical 17 lay opinion. 18 If you have testimony, go ahead, 19 Mike. 20 A. Sorry, could you just repeat the 21 question, John? I want to make sure I'm 22 answering it correctly. 23 Q. I guess I just want to know, and 24 I think you kind of hinted at this a 25 little bit earlier today, but I guess what</p>	<p>Page 117</p>

<p>1 Confidential - Pugatch 2 I really want to know is do you think that 3 the particular portfolio manager made a 4 difference in the loss of value that HCLOF 5 suffered? 6 MS. WEISGERBER: Same 7 objections. 8 A. Again, it sounds like you're 9 asking a different question there than 10 what I thought I understood your question 11 to be initially. What I would say to that 12 is the decision originally to change the 13 portfolio manager, and ultimately the 14 events that took place following the 15 Arbitration Award for Mr. Terry, resulted 16 in the subsequent Acis bankruptcy, which 17 in turn has led to the destruction of 18 value, because of the inability to 19 refinance or reset, the underlying CLOs. 20 Q. So HarbourVest is not alleging 21 that the portfolio manager made any 22 particular decisions or participated in 23 any mismanagement that led to reduction in 24 value? 25 MS. WEISGERBER: Objection to</p>	Page 118	Page 119
<p>1 Confidential - Pugatch 2 I guess -- 3 A. If you're referring to 4 underlying credits, that would be the 5 portfolio manager in each of the 6 individual CLOs. The impact in value to 7 the equity investment in the CLOs is a 8 decision at the HCLOF level, where the 9 majority of that value erosion has 10 resulted from the inability to refinance 11 or reset those CLO entities. 12 Q. And that's what we're talking 13 about when you said that they, that 14 Highland changed the portfolio manager, 15 you're talking about at the HCLOF level, 16 right? 17 MS. WEISGERBER: Objection to 18 form. 19 A. Well, I was responding to the 20 question that I thought you asked. I 21 wasn't necessarily stating that. 22 Q. I guess all I'm really trying to 23 do here is just understand HarbourVest's 24 position. And it sounds to me, and 25 correct me if I'm wrong, it sounds to me</p>	Page 120	Page 121

<p>1 Confidential - Pugatch</p> <p>2 EXAMINATION</p> <p>3 BY MR. KANE:</p> <p>4 Q. This is John Kane. I represent</p> <p>5 CLO Holdco.</p> <p>6 Hi, Mike Pugatch. It's nice to</p> <p>7 talk to you.</p> <p>8 A. Likewise.</p> <p>9 Q. I just wanted to briefly</p> <p>10 confirm. I believe you testified you</p> <p>11 participated in negotiations that lead to</p> <p>12 the Settlement Agreement, that is part of</p> <p>13 the 9019 motion, before the bankruptcy</p> <p>14 court; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And did you actively negotiate</p> <p>17 the terms of that Settlement Agreement?</p> <p>18 A. Yes.</p> <p>19 Q. As in dollar amounts, what the</p> <p>20 consideration exchanged, how it would</p> <p>21 work, that kind of stuff, obviously with</p> <p>22 the assistance of counsel?</p> <p>23 A. Yes. All of that. The</p> <p>24 negotiations were, you know, over the</p> <p>25 course of a number of weeks and a number</p>	Page 122	Page 123
<p>1 Confidential - Pugatch</p> <p>2 Q. And what would you estimate, I</p> <p>3 going to have to imagine, let me rephrase</p> <p>4 the question.</p> <p>5 Have you guys done kind of an</p> <p>6 internal best guess of what your unsecured</p> <p>7 and subordinated claims would be, under</p> <p>8 the plan, the value?</p> <p>9 MS. WEISGERBER: Objection.</p> <p>10 Objection to form.</p> <p>11 A. Just to be clear, John, are you</p> <p>12 referring to the expected recovery value</p> <p>13 of our claims?</p> <p>14 Q. Yes, sir.</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form. Can we just clarify, so you're</p> <p>17 talking about what they'll recover</p> <p>18 ultimately? Is that the question,</p> <p>19 John? I'm confused myself. I just</p> <p>20 want to be sure I am following.</p> <p>21 MR. KANE: Yeah. So I'm asking</p> <p>22 Mike how much he believes, based on</p> <p>23 his analysis, that HarbourVest is</p> <p>24 likely to recover from the \$45 million</p> <p>25 allowed general unsecured claim and</p>	Page 124	Page 125
<p>1 Confidential - Pugatch</p> <p>2 of conversations directly with the Debtor,</p> <p>3 with counsel, all-hands calls, et cetera.</p> <p>4 Q. Okay. And as part of that in</p> <p>5 the Settlement Agreement, you say the</p> <p>6 HarbourVest entities were members in HCLOF</p> <p>7 are in essence selling their shares to the</p> <p>8 Debtor, and also in exchange getting some</p> <p>9 claims back in the Debtor's plan. Is that</p> <p>10 a fair summary?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form. Compound question.</p> <p>13 Q. Let me ask it a different way.</p> <p>14 A. Can you re-ask that, please?</p> <p>15 Q. Yeah. I'm happy to do that.</p> <p>16 Why don't you describe for me</p> <p>17 how you would summarize that settlement?</p> <p>18 A. Largely, as I think you just</p> <p>19 described it, which was in exchange for,</p> <p>20 in exchange for the, both the unsecured</p> <p>21 creditors' claim, and subordinated</p> <p>22 creditors' claim, that settlement value is</p> <p>23 in exchange for us transferring the</p> <p>24 interest in HCLOF to the Debtor, as part</p> <p>25 of that overall negotiating package.</p>		

<p>1 Confidential - Pugatch</p> <p>2 Q. What is your understanding of</p> <p>3 the current value of the HarbourVest</p> <p>4 shares in HCLOF that would be transferred</p> <p>5 under this Agreement?</p> <p>6 A. It's roughly \$22.5 million of</p> <p>7 their value.</p> <p>8 Q. So doing a little bit of, you</p> <p>9 know, back-of-the-table-cloth math, how do</p> <p>10 you allocate value between the releases</p> <p>11 that you are receiving and the shares that</p> <p>12 you are transferring?</p> <p>13 MR. KANE: I'm sorry. Let me</p> <p>14 rephrase that. Let me ask that</p> <p>15 question differently.</p> <p>16 Q. In addition to the claims under</p> <p>17 the plan, HarbourVest is providing the</p> <p>18 Debt – sorry, in addition to the shares</p> <p>19 that are being transferred, HarbourVest is</p> <p>20 providing to the Debtor certain releases</p> <p>21 for its litigation claims; is that</p> <p>22 correct?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form.</p> <p>25 A. Correct.</p>	Page 126	Page 127
<p>1 Confidential - Pugatch</p> <p>2 interest and the release of the claims</p> <p>3 that we had outstanding as the Debtor.</p> <p>4 MR. KANE: Now, I want to turn</p> <p>5 your attention to what I've included</p> <p>6 in the chat. You can pull it down</p> <p>7 pretty easily if you want. But it</p> <p>8 would be Holdco Depo Exhibit 2. If</p> <p>9 that would be easier than a screen</p> <p>10 share, if you'd like, I'm happy to do</p> <p>11 that as well.</p> <p>12 MS. WEISGERBER: Which document</p> <p>13 is it, John? Because I just can't</p> <p>14 pull stuff off the Zoom right now.</p> <p>15 MR. KANE: Oh, I'm sorry. It's</p> <p>16 the Settlement Agreement with the</p> <p>17 attached exhibits. I can share my</p> <p>18 screen so we're all on the same page.</p> <p>19 Just to confirm we're looking at</p> <p>20 the same thing, here's the Settlement</p> <p>21 Agreement. There's a docket entry at</p> <p>22 the top so you can see it, 1631 filed</p> <p>23 by the Debtor 12/24/20.</p> <p>24 This is Exhibit 1 to the</p> <p>25 Declaration of John Morris in Support</p>	Page 128	Page 129

<p>1 Confidential - Pugatch 2 form. The document speaks for itself. 3 Is that a question, John? 4 MR. KANE: Yeah. I asked if 5 that was his understanding, that this 6 is a representation by HarbourVest 7 that it has the authority to transfer 8 the shares if the Settlement Agreement 9 is approved. 10 MS. WEISGERBER: Objection to 11 form. Objection to the extent it 12 calls for a legal conclusion. 13 To the extent you have a 14 nonlegal conclusion, non-privileged 15 understanding, Mike, you can share 16 that. 17 A. Yeah, I'm just saying I can only 18 answer that based on conversations with 19 counsel. 20 MR. KANE: Okay. I won't push 21 that. That's fine. 22 Q. If we keep going down here as 23 part of this attachment, there's a 24 Transfer Agreement, Exhibit A to the 25 Settlement Agreement. Are you familiar</p>	Page 130	Page 131
<p>1 Confidential - Pugatch 2 that correct? 3 MS. WEISGERBER: Same objection. 4 I think you can give your 5 general understanding, but then not 6 get into specific conversations. 7 A. My understanding of that is 8 based on conversations with counsel, but 9 yes, that is my understanding, John. 10 Q. Okay. I'm going to highlight a 11 passage here. Can you see this 12 highlighted area? "Whereas, the Portfolio 13 Manager desires to consent to such 14 transfers and to the admission of 15 Transferee as a shareholder..." 16 Were you aware of that 17 provision? 18 MS. WEISGERBER: Objection to 19 form. 20 A. Yes. It's in the document. 21 Q. Do you have any understanding of 22 why that provision was included in this 23 agreement? 24 MS. WEISGERBER: Objection to 25 form. Objection to the extent it</p>	Page 132	Page 133

1 Confidential - Pugatch 2 portfolio manager? 3 MS. WEISGERBER: Objection to 4 form. 5 A. Honestly, I don't have -- I 6 don't have enough information to answer 7 that definitively. 8 Q. Okay. Going back to the 9 Settlement Agreement, there's a reference 10 in here to a defined term, "portfolio 11 manager." 12 Do you see that? 13 A. Yep. 14 Q. And is this the same one that's 15 listed in the Member Agreement, Highland 16 HCF Advisor, Ltd.? 17 A. I believe that seems to be the 18 position, yes. 19 Q. Okay. So when we're talking 20 about down here, "Whereas, the Portfolio 21 Manager desires to consent," this consent 22 provision is referring to the same 23 definition of portfolio manager that's 24 included in this Member Agreement; is that 25 correct?	Page 134	1 Confidential - Pugatch 2 MR. MORRIS: Objection to the 3 form. 4 MS. WEISGERBER: Objection -- 5 same objections. Objection to the 6 extent it calls for privileged 7 information. 8 A. That sounds like a legal 9 conclusion. 10 Q. I would have thought it was 11 reading, Mr. Pugatch. 12 A. Well, if you're asking me to 13 definitively confirm that, that sounds 14 like a legal interpretation. 15 Q. Let me ask that a different way. 16 Do you understand that the 17 portfolio manager is listed as Highland 18 HCF Advisor, Ltd. in the Member Agreement? 19 A. Yes. 20 Q. And in this Transfer Agreement, 21 the portfolio manager is listed as 22 Highland HCF Advisor, Ltd.? 23 A. Yes. 24 Q. And those are the same entities? 25 A. Yes.	Page 135
1 Confidential - Pugatch 2 Q. All right. Are you familiar 3 with Section 6 of this Member Agreement? 4 A. (Nods.) 5 Q. Have you ever read this 6 document? 7 A. I have. 8 Q. Okay. And can you give me your 9 understanding of what must take place 10 under this document for HarbourVest to 11 transfer its shares? 12 MS. WEISGERBER: Object to the 13 form. Object to the extent it calls 14 for a legal conclusion. Object to the 15 extent it calls for any privileged 16 information or conversations. 17 Mike, to the extent you have an 18 independent understanding, separate 19 from conversations with counsel, you 20 can answer the question. 21 A. I would say my understanding of 22 what's required in connection with the 23 transfer is based on conversations with 24 counsel. 25 Q. Do you believe that the	Page 136	1 Confidential - Pugatch 2 HarbourVest entities can transfer its 3 shares without obtaining the consent of 4 the portfolio manager? 5 MS. WEISGERBER: Objection to 6 form. Objection to the extent it 7 calls for a legal conclusion. 8 Same instruction, Mike, as to 9 privileged conversations. 10 A. Again, my view on that would be 11 based on conversations with counsel. 12 Q. Are you aware of whether 13 HarbourVest provided any notice to other 14 members of its intent to transfer its 15 shares to the Debtor's affiliate under the 16 Settlement Agreement, other than the 17 filing of the 9019 motion? 18 MS. WEISGERBER: Same objection. 19 But there is a factual question in 20 there if you can answer it, Mike, but 21 no privileged conversation. 22 A. Yeah, I'm not aware of that. 23 Q. Did you provide members 30 days 24 after the receipt of notice of 25 HarbourVest's intent to transfer its	Page 137

<p>1 Confidential - Pugatch</p> <p>2 shares to the Debtor's affiliate and</p> <p>3 provide those members with an opportunity</p> <p>4 to purchase their pro rata amount of the</p> <p>5 shares?</p> <p>6 MS. WEISGERBER: Same objection.</p> <p>7 A. No.</p> <p>8 Q. And just to make sure I'm not</p> <p>9 asking this question in a way that you</p> <p>10 don't understand what I'm asking: Do you</p> <p>11 see this highlighted provision here?</p> <p>12 A. Yes.</p> <p>13 Q. I'm asking whether HarbourVest</p> <p>14 provided members 30 days after the receipt</p> <p>15 of a notice letter and an opportunity to</p> <p>16 purchase their entire pro rata share of</p> <p>17 the shares proposed to be transferred by</p> <p>18 the HarbourVest entities?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form. Objection to the extent it</p> <p>21 calls for privileged conversations or</p> <p>22 a legal conclusion. Objection to the</p> <p>23 extent it's asking about one piece of</p> <p>24 the document.</p> <p>25 And you're welcome to look at</p>	Page 138	Page 139
<p>1 Confidential - Pugatch</p> <p>2 listed under this Member Agreement of</p> <p>3 HarbourVest's intent to transfer the</p> <p>4 shares that are the subject to the</p> <p>5 Settlement Agreement?</p> <p>6 A. No.</p> <p>7 Q. Has HarbourVest provided any</p> <p>8 members with a right of first refusal and</p> <p>9 a cash purchase price for which it would</p> <p>10 sell its shares instead of transferring</p> <p>11 those shares to the Debtor or the Debtor's</p> <p>12 affiliate under the Settlement Agreement?</p> <p>13 MS. WEISGERBER: Same</p> <p>14 objections. Objection to form.</p> <p>15 Objection to extent it calls for a</p> <p>16 legal conclusion or privileged</p> <p>17 conversations, including -- regarding</p> <p>18 the specifics of that provision.</p> <p>19 I don't think that's a purely</p> <p>20 factual question.</p> <p>21 Q. Did HarbourVest offer to sell</p> <p>22 the shares to the other members? That's</p> <p>23 not a factual question?</p> <p>24 MS. WEISGERBER: Objection -</p> <p>25 A. On the basis of that factual</p>	Page 140	Page 141

<p>1 Confidential - Pugatch 2 form. Misstates testimony. 3 A. Sorry, could you just repeat the 4 question, please, John? 5 Q. Yes, Mr. Pugatch. 6 I'm actually just trying to get 7 some clarification from you, because I 8 don't think I understood your answer 9 about – I had asked just – again, I 10 don't want any correspondence with your 11 counsel or what your counsel advised, I'm 12 asking: Do you know whether HarbourVest 13 sought written consent from Highland HCF 14 Advisor for its – or to transfer its 15 shares to the Debtor or the Debtor's 16 affiliate under the Settlement Agreement? 17 MS. WEISGERBER: Same objection. 18 A. My understanding is HarbourVest 19 did not explicitly have those 20 conversations or seek that consent. 21 Q. Okay. Are you aware of whether 22 HarbourVest received any written consent 23 from Highland HCF Advisors, other than 24 what's in the Transfer Agreement attached 25 to the Settlement Agreement?</p>	Page 142	Page 143
<p>1 Confidential - Pugatch 2 provide consent, whether written or 3 otherwise, to the transfer? 4 A. I am not aware that that consent 5 has been provided as of yet. 6 Q. Are you aware of whether any 7 HarbourVest representatives have had 8 conversations with the Debtor's 9 representatives about the necessity of 10 consent to the transfer of their shares? 11 MS. WEISGERBER: Objection to 12 form – 13 MR. KANE: I'll re-ask the 14 question. I want to clarify that 15 point. 16 BY MR. KANE: 17 Q. Mr. Pugatch, are you aware of 18 whether any HarbourVest representatives 19 had conversations with the Debtor's 20 representatives about the necessity of 21 obtaining the HCLOF portfolio manager's 22 written consent before transferring the 23 shares to the Debtor's representative or 24 affiliate under the terms of the 25 Settlement Agreement?</p>	Page 144	Page 145

<p>1 Confidential - Pugatch 2 consent of the portfolio manager as 3 defined in the Transfer Agreement was 4 required before the shares could be 5 transferred under the Settlement 6 Agreement? 7 MS. WEISGERBER: Objection to 8 the form. Objection to the extent it 9 calls for a legal conclusion or 10 privileged conversation. And I think 11 that one does, John. 12 A. Yeah, I can only answer that 13 based on conversation with lawyers. 14 Q. Wasn't the question whether – 15 I'm sorry. Maybe I forgot my own 16 question. 17 But I thought it was based on 18 your conversations with the Debtor's 19 representative, was it your understanding, 20 not based on your conversation with 21 counsel. 22 MS. WEISGERBER: Can you repeat 23 the whole question because I 24 definitely misunderstood it then too. 25 Q. Okay. Based on your</p>	Page 146	Page 147
<p>1 Confidential - Pugatch 2 Q. Mr. Pugatch, during Mr. Wilson's 3 questioning, I believe his last question 4 related to identifying as between two 5 choices the primary source or the cause of 6 HarbourVest's damages. 7 In your opinion, is – are 8 HarbourVest damages attributable to any 9 one cause? 10 A. No, I would say there were 11 multiple root causes of the damages and 12 diminution in value that was suffered in 13 connection with the investment. 14 MS. WEISGERBER: Okay. I don't 15 have any further questions. 16 MR. WILSON: I think I'd like to 17 ask a couple more. 18 BY MR. WILSON: 19 Q. Mr. Pugatch, I think you 20 testified earlier that the investment in 21 HCLOF was comprised of multiple CLOs, 22 correct? 23 A. Correct. 24 Q. And some of those CLOs were 25 managed by Acis, to your understanding?</p>	Page 148	Page 149

1 Confidential - Pugatch 2 form of the question. 3 MS. WEISGERBER: Objection. 4 Same objection. 5 A. Yes. 6 Q. Yes. Okay. Thank you. 7 And I just had two more 8 questions. 9 So, if there was going to be a 10 reset, that would have to be done at the 11 CLO level, each CLO would have to be 12 reset? 13 MR. MORRIS: Objection. 14 MS. WEISGERBER: Objection to 15 form. 16 A. That is correct. 17 Q. And do you know of any specific 18 CLO that requested a reset but was not 19 granted a reset? 20 MR. MORRIS: Objection to form. 21 MS. WEISGERBER: Same objection. 22 And foundation. 23 A. When you say "CLOs who requested 24 a reset," can be more clear, please? 25 Q. We just talked about how this	Page 150	Page 151
1 Confidential - Pugatch 2 up, John. 3 MR. WILSON: This was my last 4 question, I just need an answer to it. 5 And I think he tried to answer, but I 6 didn't understand what he said. 7 MS. WEISGERBER: Objection. Can 8 you re-ask the question so we have a 9 clear question. 10 MR. WILSON: Well, Madam Court 11 Reporter, can you read back his last 12 response? 13 (Record read.) 14 BY MR. WILSON: 15 Q. Can you repeat what you intended 16 to answer to the last question? 17 MS. WEISGERBER: Same objection. 18 If you recall, Mike. 19 A. I'm sorry, John. Can you just 20 repeat the question, please, make sure I'm 21 answering what you want me to answer. 22 Q. My question is the same as it's 23 been: Are you aware of any CLO that 24 requested a reset and was not granted one? 25 MS. WEISGERBER: Objection to	Page 152	Page 153

1	Confidential - Pugatch	Page 154	1	Page 155
2	MR. WILSON: Yes, please.		2	ACKNOWLEDGEMENT OF DEPONENT
3	MR. MORRIS: Yes, please.		3	
4	MS. WEISGERBER: Same for		4	I, MICHAEL PUGATCH, do hereby
5	HarbourVest, please.		5	acknowledge that I have read and
6	MR. MALONEY: I don't need an		6	examined the foregoing testimony, and
7	expedited transcript. I'd just be		7	the same is a true, correct and
8	happy to get one regular copy. I'll		8	complete transcription of the
9	take whatever you would produce in the		9	testimony given by me, and any
10	ordinary course. Same as what		10	corrections appear on the attached
11	everyone else ordered.		11	Errata sheet signed by me.
12	(Time Noted: 4:35 p.m. EDT.)		12	
13			13	
14			14	
15			15	(DATE) (SIGNATURE)
16			16	
17			17	
18			18	
19			19	
20			20	
21			21	
22			22	
23			23	
24			24	
25			25	
1		Page 156	1	Page 157
2	CERTIFICATE OF SHORTHAND REPORTER-NOTARY		2	ERRATA SHEET
3	PUBLIC		3	Case Name:
4	I, Amanda Gorrono, the officer		4	Deposition Date:
5	before whom the foregoing deposition		5	Deponent:
6	was taken, do hereby certify that the		6	Pg. No. Now Reads Should Read Reason
7	foregoing transcript is a true and		7	_____
8	correct record of the testimony given;		8	_____
9	that said testimony was taken by me		9	_____
10	stenographically and thereafter		10	_____
11	reduced to typewriting under my		11	_____
12	direction; and that I am neither		12	_____
13	counsel for, related to, nor employed		13	_____
14	by any of the parties to this case and		14	_____
15	have no interest, financial or		15	_____
16	otherwise, in its outcome.		16	_____
17	IN WITNESS WHEREOF, I have		17	_____
18	hereunto set my hand this 12th day of		18	_____
19	January, 2021.		19	_____
20			20	
21			21	Signature of Deponent
22	AMANDA GORRONO, CLR		22	SUBSCRIBED AND SWORN BEFORE ME
23	CLR NO: 052005 - 01		23	THIS ____ DAY OF _____, 20 ____.
24	Notary Public in and for the State of New		24	_____
25	York		25	(Notary Public) MY COMMISSION EXPIRES: _____

\$	11/29/2017 79:3 12/24/20 128:23 \$1,570,429 27:23 \$1.02 112:19 \$135 28:25 30:2 \$150 112:23 \$22.5 126:6 \$295,000 93:23 94:22 95:7 104:14 \$35 110:2 125:2 \$4,998,501 27:20 \$44,587,820 59:3 \$44.5 112:14 \$45 109:25 124:24 \$5 108:22 \$73 56:25 \$73,522,928 27:14 \$8 78:2 ((i) 42:22 0 08/15/2017 68:7 1 1 16:4,7 19:17 31:21 59:10 61:14,15 109:23 114:22 128:24 133:19 10 60:11,15 83:19,20 84:3,6 97:22 99:5 103:23 10/10/2018 83:22 100 64:5,11,15 1057 22:23 45:12 11 32:2 35:9 36:12 51:19 52:22 109:4,5, 15	2020 16:12 59:3 109:21 112:13 217 14:22 23 109:20 27 51:20 52:21 27th 51:19 28 21:3 28th 81:17 2:30 112:6 3 3 18:18,19,24 26:10 28:7 58:25 30 137:23 138:14 139:25 30(b)(6) 15:13 3018(a) 18:22 19:8 31 59:3 63:8 112:13 35.49 65:14 36 55:9 37 45:16 53:7 382 9:12 39 54:25 2 4 4 20:25 21:2 33:9 37:13,22 51:18 84:24 93:15 4.1 37:24 4.2 42:21 4.3 38:23 40:2 44:13, 22 4/08/2020 16:8 17:3 40,000 90:25 410 17:7 47 13:4 49 27:15 65:24 49.02 66:5	49.98 27:16 65:20 66:3 49.985% 85:5 4A 129:19 5 5 16:16 22:15,16,17 37:13,21,22 45:11 95:11 96:24 110:14 50 20:11 6 6 61:5,8 84:23 136:3 617 22:19 63 67:14 7 7 63:4,6,7 95:9 112:17 75 125:19 8 8 16:12 23:14 62:3 68:3,6 80 125:19 82 109:11 9 9 78:21 79:2 95:24 9019 11:2 15:8 98:3 109:17 122:13 137:17 A ability 42:16 54:7,13, 17,18,20,23 95:16 96:9,20 98:10,11 105:18 119:12,20 absolutely 49:24 82:19 139:11	accept 110:17 accordance 59:7 103:9 accurate 33:14 93:24 accusations 81:7 Acis 31:22,23,24 32:4,5,12,14,24 35:2 36:11,13,24 46:10, 15,21 47:9,14,22 48:11 49:4,10,14,20 50:2,11 51:11 52:21 53:4,5 74:3 84:5 85:16 86:19,23 87:4, 13,22 88:7,11,19 89:11 90:8,17 91:2,6, 20 92:4,5,7,8,14,15, 20 93:3,18 94:12 96:5,6,7,10,11,22 97:3 101:15 104:13 105:9 107:15,23 108:3 114:6,21 115:6,20 116:23 118:16 121:6 148:25 149:18 151:13,15 Acis' 51:20 Acis-branded 35:6 Acis-managed 35:5 Acis/hclof 11:11,12 acquiring 63:22 act 40:3 145:9 action 40:5 56:16 actionable 72:16 actions 39:4,9,13 40:23 42:18,21 91:21 109:11 114:9 actively 122:16 activities 53:15 actual 113:14 add 58:18 added 111:9 addition 126:16,18 127:11 additional 27:20 28:3 57:16 58:8,16 95:13
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EXHIBIT 8

003075

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)
) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054-sgj11
)
) Debtor.) Re: Docket Nos. 1625, 1697, 1706,
)) 1707

**DEBTOR'S OMNIBUS REPLY IN SUPPORT OF DEBTOR'S MOTION FOR
ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST
(CLAIM NOS. 143, 147, 149, 150, 153, 154), AND AUTHORIZING ACTIONS
CONSISTENT THEREWITH**

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby submits this reply (the “Reply”) in support of its *Motion for Entry of an Order Approving Settlement with HarbourVest (Claim No.143,147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the “Motion”).² In further support of the Motion, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT

1. If granted, the Motion will resolve a \$300 million general unsecured claim against the Debtor’s estate for less than \$16.8 million in actual value.³ The settlement is another solid achievement for the Debtor and – not surprisingly – is opposed by no one except Mr. Dondero and entities affiliated with him.

2. As discussed in the Motion, in November 2017, HarbourVest invested \$80 million in exchange for a 49.98% membership interest in HCLOF – an entity managed by a subsidiary of the Debtor. The balance of HCLOF’s interests are held by CLO Holdco, Ltd. (an entity affiliated with Mr. Dondero), the Debtor, and certain of the Debtor’s employees. Subsequent to its investment in HCLOF, HarbourVest incurred substantial losses on its investment in HCLOF and filed claims against the Debtor’s estate.

3. HarbourVest asserts claims for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

² All capitalized terms used but not defined herein have the meanings given to them in the Motion.

³ Under the proposed settlement, HarbourVest would receive an allowed, general unsecured claim of \$45 million and an allowed, subordinated claim of \$35 million. Based on the estimated recovery for general unsecured creditors of 87.44% (which is a recovery based on certain outdated assumptions discussed *infra*), HarbourVest’s \$45 million general unsecured claim is estimated to be worth approximately \$39.3 million and the \$35 million subordinated claim, which is junior to the general unsecured claim, is currently estimated to have value only if there are litigation recoveries. In addition, HarbourVest is transferring to an affiliate of the Debtor its interest in HCLOF, which is estimated to be worth approximately \$22.5 million. Thus, HarbourVest’s estimated recovery on its general unsecured and subordinated claims is estimated at approximately \$16.8 million on a net economic basis. This estimate, however, is dated and is based on the claims that were settled as of the filing of the Debtor’s plan in November 2020.

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. In furtherance of these claims, HarbourVest alleges it was misled by the Debtor and its employees, including Mr. Scott Ellington (then the Debtor's general counsel), and that subsequent to investing in HCLOF, Mr. Dondero and the Debtor used HCLOF both as a piggybank to fund the litigation against Acis Capital Management, L.P. ("Acis") and as a scapegoat for the Debtor's litigation strategy, in each case to HarbourVest's substantial detriment.

4. Specifically, HarbourVest alleges that:

- the Debtor and its employees, including Mr. Ellington, misled HarbourVest about its intentions with respect to Mr. Terry's arbitration award against Acis and orchestrated a series of fraudulent transfers and corporate restructurings, the true purpose of which was to denude Acis of assets and make it judgment proof;
- the Debtor and its employees, including Mr. Ellington, misled HarbourVest as to the intent and true purpose of these restructurings and led HarbourVest to believe that Mr. Terry's claims against Acis were meritless and a simple employment dispute that would not affect HarbourVest's investment;
- the Debtor, through Mr. Dondero, improperly exercised control over or misled HCLOF's Guernsey-based board of directors to cause HCLOF to engage in unnecessary, unwarranted, and resource-draining litigation against Acis;
- the Debtor improperly caused HCLOF to pay substantial legal fees of various entities in the Acis bankruptcy that were unwarranted, imprudent, and not properly chargeable to HCLOF; and
- the Debtor used HarbourVest as a scapegoat in its litigation against Acis by asserting that the Debtor's improper conduct and scorched-earth litigation strategy was at HarbourVest's request, which was untrue.

5. The Debtor believed, and continues to believe, that it has viable defenses to HarbourVest's claims. Nevertheless, those defenses would be subject to substantial factual disputes and would require expensive and time-consuming litigation that would likely be resolved only after a lengthy trial all while the Debtor (or its successor) assumes the risk that the defenses might fail. The evidence will show that the proposed settlement is the product of substantial, arm's length – and sometimes quite heated – negotiations between and among the

principals and their counsel. The evidence will also show that one of HarbourVest's primary concerns in settling its claim was that part of that settlement would include the extrication of HarbourVest from the Highland web of entities and the related litigation. The proposed settlement accomplishes that and does so in compliance with HCLOF's governing agreements.

6. Pursuant to the proposed settlement, (a) HarbourVest will receive (i) an allowed, general unsecured claim in the amount of \$45 million, and (ii) an allowed, subordinated claim in the amount of \$35 million; (b) HarbourVest will transfer its 49.98% interest in HCLOF (valued at approximately \$22.5 million) to a wholly-owned subsidiary of the Debtor; and (c) the parties will exchange mutual and general releases. The Debtor believes that the proposed settlement is reasonable and results from the valid and proper exercise of its business judgment. And the Debtor's creditors apparently agree. None of the major parties-in-interest or creditors in this case has objected to the Motion: not the Committee, the Redeemer Committee, Acis, Patrick Daugherty, or UBS.

7. In distinction, the only objecting parties are Mr. Dondero, his family trusts (the Dugaboy Investment Trust ("Dugaboy") and Get Good Trust ("Get Good," and together with Dugaboy, the "Trusts")), and CLO Holdco (a wholly-owned subsidiary of Mr. Dondero's Charitable Donor Advised Fund, L.P. (the "DAF")) (collectively, the "Objectors"). Each of the Objectors has only the most tenuous economic interest in and connection to the Debtor's settlement with HarbourVest. Each of the Objectors is also controlled directly or indirectly by Mr. Dondero who has coordinated each of the Objectors litigation strategies against the Debtor.⁴ Mr. Dondero's efforts to litigate every issue in this case – directly and by proxy – should be rebuffed, and the objections overruled. The following is a brief summary of the objections.

⁴ See Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021 [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q.

Pleading	Objection/Reservation	Response
<i>Objection of James Dondero [Docket No. 1697] (the “<u>Dondero Objection</u>”)</i>	Because HarbourVest was damaged by the injunction entered in Acis, the settlement seeks to revisit this Court’s rulings in Acis.	Mr. Dondero is misdirecting the Court. HarbourVest’s claim arises from the misrepresentations of Mr. Dondero, Mr. Ellington, and others, not this Court’s rulings in Acis, including the failure to disclose the fraudulent transfer of assets.
	The settlement is not fair and equitable because it does not address (1) Acis’s mismanagement, (2) how the Debtor is liable for HarbourVest’s damages, (3) the success on the merits, (4) the costs of litigation, and (5) the Debtor’s ability to realize the value of the HCLOF interests in light of the Acis injunction.	Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation. The Debtor has assessed the value of the HCLOF interests in light of all factors, including the Acis injunction.
	The HarbourVest settlement represents a substantial windfall to HarbourVest.	Mr. Dondero ignores the economics of this case, which have value breaking in Class 8 (General Unsecured Claims). The value of the settlement is not \$60 million; it is approximately \$16.8 million against a claim of \$300 million. There is no windfall.
	The HarbourVest settlement is improper gerrymandering because it provides HarbourVest with a general unsecured claim and a subordinated claim in order to secure votes for the plan.	The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.
<i>Objection of the Dugaboy Investment Trust and Get Good Trust [Docket No. 1706] (the “<u>Trusts Objection</u>”)</i>	The settlement represents a radical change in the Debtor’s earlier position on the HarbourVest settlement.	Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation.
	The settlement appears to buy HarbourVest’s vote.	The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.
	No information is provided as to whether the Debtor can acquire HarbourVest’s interest in HCLOF or the value of that interest to the estate.	As discussed below, the HCLOF interest will be transferred to a wholly-owned subsidiary of the Debtor. Mr. Seery will testify as to the benefit of the HCLOF interests to the estate.
<i>Objection of CLO Holdco [Docket No. 1707] (“<u>CLOH Objection</u>”)</i>	HarbourVest cannot transfer its interests in HCLOF unless it complies with the right of first refusal.	CLO Holdco misinterprets the operative agreements and tries to create ambiguity where none exists.

8. These objections are just the latest objections filed by Mr. Dondero and his related entities to any attempt by the Debtor to resolve this case,⁵ including the Debtor's settlement with Acis [Docket No. 1087] and the seven separate objections filed by Mr. Dondero and his related entities to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the "Plan").⁶ It will not shock this Court to hear that each of the Objectors is also objecting to the Plan. In contradistinction, the Debtor has heard this Court's admonishments about old Highland's culture of litigation as evidenced by this case, Acis's bankruptcy, and beyond. Although the Debtor has vigorously contested claims when appropriate, the Debtor has also sought to settle claims and limit the senseless fighting. The Debtor has successfully resolved the largest claims against the estate, including the claims of the Redeemer Committee, Acis, and, as recently announced to this Court, UBS. The Debtor would ask this Court to see through the pretense of the Dondero-related entities' objections to the HarbourVest settlement and approve it as a valid exercise of the Debtor's business judgment.

⁵ As an example of Mr. Dondero's litigiousness, on January 12, 2021, Mr. Dondero filed notice that he will be appealing the preliminary injunction entered against him earlier on January 12, 2021.

⁶ (1) *James Dondero's Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1661]; (2) *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust, The Dugaboy Investment Trust) [Docket No. 1667]; (3) *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon) [Docket No. 1669]; (4) *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670]; (5) *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; (6) *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]; and (7) *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676].

REPLY

A. Standing

9. **James Dondero.** In the Dondero Objection, Mr. Dondero asserts he is a “creditor, indirect equity security holder, and party in interest” in the Debtor’s bankruptcy. While that claim is ostensibly true, it is tenuous at best. On April 8, 2020, Mr. Dondero filed three unliquidated, contingent claims that he promised to update “in the next ninety days.”⁷ More than nine months later, Mr. Dondero has yet to “update” those claims to assert an actual claim against the Debtor’s estate.⁸

10. Mr. Dondero’s claim as an “indirect equity security holder” is also a stretch. Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor’s Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero’s recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his “indirect” equity interest, the Debtor’s estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be satisfied.

11. **Dugaboy and Get Good.** Dugaboy and Get Good are sham Dondero “trusts” with only the most attenuated standing. Dugaboy has filed three proofs of claim [Claim Nos. 113; 131; 177]. In two of these claims, Dugaboy argues that (1) the Debtor is liable to Dugaboy

⁷ Mr. Dondero filed two other proofs of claim that he has since withdrawn with prejudice. See **Docket No. 1460**.

⁸ Without knowing the nature of the “updates,” the Debtor does not concede that any “updates” would have been procedurally proper and reserves the right to object to any proposed amendment to Mr. Dondero’s claims.

for its postpetition mismanagement of the Highland Multi Strategy Credit Fund, L.P., and (2) this Court should pierce the corporate veil and allow Dugaboy to sue the Debtor for a claim it ostensibly has against the Highland Select Equity Master Fund, L.P. – a Debtor-managed investment vehicle. The Debtor believes that each of the foregoing claims is frivolous and has objected to them. [Docket No. 906].

12. In its third claim, Dugaboy asserts a claim against the Debtor arising from its Class A limited partnership interest in the Debtor (which represents just 0.1866% of the total limited partnership interests in the Debtor). Similarly, Get Good filed three proofs of claim [Claim Nos. 120; 128; 129] arising from its prior ownership of limited partnership interests in the Debtor. Because each of these claims arises from an equity interest, the Debtor will seek to subordinate them under 11 U.S.C. § 510 at the appropriate time. As set forth above, these interests are out of the money and are not expected to receive any economic recovery.

13. Consequently, Mr. Dondero, Dugaboy, and Get Good's standing to object to the HarbourVest settlement is attenuated and their chances of recovery in this case are extremely speculative at best. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had a “pecuniary interest . . . directly affected by the bankruptcy proceeding”); *see also In re Flintkote Co.*, 486 B.R. 99, 114-15 (Bankr. D. Del. 2012), *aff'd* 526 B.R. 515 (D. Del. 2014) (a claim that is speculative cannot confer party in interest standing). Mr. Dondero, Dugaboy, and Get Good's minimal interest in the estate should not allow them to overrule the estate's business judgment or veto settlements with creditors, especially when no actual creditors and constituents have objected. “[A] bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, [the judge] should consider all salient factors . . . and . . . act to further the diverse interests of the debtor, creditors and equity

holders, alike.” *In re Lionel*, 722 F.2d 1063, 1071 (2d Cir. 1983).

B. Mr. Dondero’s Objection and his “Trusts” Objection Are Without Merit

14. As discussed in the Motion, under applicable Fifth Circuit precedent, a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See, e.g., In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). In making this determination, courts look to the following factors:

- probability of success in the litigation, with due consideration for the uncertainty of law and fact;
- complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- all other factors bearing on the wisdom of the compromise, including (i) “the paramount interest of creditors with proper deference to their reasonable views” and (ii) whether the settlement is the product of arm’s length bargaining and not of fraud or collusion.

Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.), 119 F.3d 349, 356 (5th Cir. 1997) (citations omitted). *See also Age Ref. Inc.*, 801 F.3d at 540; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 918 (5th Cir. 1995).

15. **The Settlement Seeks to Revisit the Acis Orders.** In the Dondero Objection, Mr. Dondero argues that HarbourVest’s claim is based on the financial harm caused to HarbourVest from Acis’s bankruptcy and the orders entered in the Acis bankruptcy. Mr. Dondero extrapolates from this that HarbourVest is seeking to challenge this Court’s rulings in Acis. (Dondero Obj., ¶¶ 17-20) Mr. Dondero misinterprets HarbourVest’s claims and the dangers such claims pose to the Debtor’s estate.

16. HarbourVest’s claims are for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. HarbourVest is not arguing that Acis or this Court caused its damages; HarbourVest is arguing that *the Debtor* – led by Mr. Dondero – (a) misled HarbourVest as to the nature of Mr. Terry’s claims against the Debtor and the litigation with Acis, (b) knowingly and intentionally failed to disclose that the Debtor was engaged in the fraudulent transfer of assets to prevent Mr. Terry from collecting his judgment, and (c) that *the Debtor* – under the control of Mr. Dondero – improperly engaged in a crusade against Mr. Terry and Acis, which substantially damaged HarbourVest and its investment in HCLOF, in each case in order to induce HarbourVest to invest in HCLOF.

17. Again, HarbourVest does not contend that Acis caused its damages. Rather, HarbourVest contends that the fraudulent transfer of assets as part of the Debtor’s crusade against Mr. Terry and Acis and the false statements and omissions about those matters caused HarbourVest to make an investment it would never have made had Mr. Dondero and the Debtor been honest and transparent. The Acis litigation – in HarbourVest’s estimation – never should have happened. Acis did not cause HarbourVest’s damages. Mr. Dondero’s crusade against Mr. Terry and the Debtor’s allegedly fraudulent statements to HarbourVest about the fraudulent transfers, Mr. Terry and Acis caused HarbourVest’s damages.

18. **The HarbourVest Claim Lacks Merit.** In their objections, Mr. Dondero and the Trusts argue that the HarbourVest settlement is not fair and equitable and not in the best interests of the estate because (a) it does not address the Debtor’s arguments against the HarbourVest claims and (b) there is a lack of pending litigation seeking to narrow the claims against the estate. These arguments only summarily address the first two factors of *Cajun Electric*, which deal with success in the litigation, and, in doing so, mischaracterize the dangers to the Debtor’s estate

posed by HarbourVest's claims. (Dondero Obj., ¶¶ 21-25; Trusts Obj., ¶ 18(a))

19. Both the Dondero Objection and – to a much lesser extent - the “Trusts” Objection allege that (a) HarbourVest’s losses were caused by Acis and its (mis)management of HCLOF’s investments (Dondero Obj., ¶ 22, 24), (b) there is no contract that supports HarbourVest’s claims (Dondero Obj. ¶ 23; Trusts Obj., ¶ 18(a)), (c) there is no causal connection between HarbourVest’s losses and the Debtor’s conduct (Dondero Obj., ¶ 24), and (d) the Debtor should litigate all or a portion of HarbourVest’s claim before settling (Dondero Obj., ¶ 25). Again, though, as set forth above, both Mr. Dondero and the “Trusts” seek to shift the cause of HarbourVest’s damages away from the Debtor’s misrepresentations and to Mr. Terry’s management of HCLOF’s investments. This is simple misdirection.

20. HarbourVest’s claims are that it invested in HCLOF based on the Debtor’s fraudulent misrepresentations. Fraudulent misrepresentation sounds in tort, not contract. *See, e.g., Clark v. Constellation Brands, Inc., 348 Fed. Appx. 19, 21* (5th Cir. 2009) (referring to party’s claim based on fraudulent misrepresentation as a tort); *Eastman Chem. Co. v. Niro, Inc., 80 F. Supp. 2d 712, 717* (S.D. Tex. 2000) (noting that party had common law duty not to commit intentional tort of fraudulent misrepresentation). There is thus no need for HarbourVest to point to a contractual provision to support its claim.⁹ Moreover, in order to defend against HarbourVest’s claims, the Debtor would need to elicit evidence showing that its employees did not make misrepresentations to HarbourVest. Such a defense would require the Debtor to rely on the veracity of Mr. Ellington’s testimony, among others. That is a high hurdle, and no reasonable person would expect the Debtor to stake the resolution of HarbourVest’s \$300 million claim on the Debtor’s ability to convince this Court that Mr. Ellington was telling HarbourVest

⁹ Subsequent to filing the Motion, the Objectors requested all agreements between HarbourVest, HCLOF, and the Debtor, and such agreements were provided.

the truth. This is especially true in light of the evidence supporting Mr. Ellington's recent termination for cause and the evidence recently provided by HarbourVest supporting its claim for fraudulent misrepresentations.

21. Finally, neither Mr. Dondero nor the "Trusts" even address the third factor analyzed by the Fifth Circuit: all other factors bearing on the wisdom of the compromise, including "the paramount interest of creditors with proper deference to their reasonable views." This is telling because no creditor or party in interest has objected to the settlement. Mr. Dondero and his proxies' preference for constant litigation should not outweigh the preference of the Debtor and its creditors for a reasonable and expeditious settlement of HarbourVest's claims.

22. **The HarbourVest Settlement Is a Windfall to HarbourVest.** Both the Dondero Objection and the "Trusts" Objection argue that the HarbourVest settlement represents a substantial windfall to HarbourVest. Both Mr. Dondero and the "Trusts" ignore the facts. Specifically, Mr. Dondero argues that HarbourVest is receiving \$60 million dollars in *actual* value for its claims. Mr. Dondero's contention, however, wrongly assumes that both the \$45 million general unsecured claim and the \$35 million subordinated claim provided to HarbourVest under the settlement will be paid 100% in full and that HarbourVest will receive \$80 million in cash. From that \$80 million, Mr. Dondero subtracts \$20 million, which represents the value Mr. Dondero ascribes to HarbourVest's interests in HCLOF that are being transferred to the Debtor. Mr. Dondero's math ignores the reality of this case.

23. The Debtor very clearly disclosed in the projections filed with the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, [Docket No. 1473] (the "Projections") that general unsecured claims would receive an 87.44% recovery *only if* the claims of UBS, HarbourVest, Integrated Financial Associates, Inc., Mr.

Daugherty, and the Hunter Mountain Investment Trust were zero. Because of the Debtor's success in settling litigation, that assumption is proving to be inaccurate. Regardless, even if general unsecured claims receive a recovery of 87.44%, because the subordinated claims are junior to the general unsecured claims, the subordinated claims' projected recovery is currently zero. As such, assuming the HCLOF's interests are worth \$22.5 million,¹⁰ the actual recovery to HarbourVest will be less than \$16.8 million. This is not a windfall. HarbourVest's investment in HCLOF was \$80 million and its claim against the estate was over \$300 million. The settlement represents a substantial discount.

24. Improper Gerrymandering and/or Vote Buying. Each of Mr. Dondero and the Trusts argue in one form or another that the HarbourVest settlement is improper as it provides HarbourVest a windfall on its claims in exchange for HarbourVest voting to approve the Plan. These unsubstantiated allegations of vote buying should be disregarded. As an initial matter, and as set forth above, HarbourVest is *not* getting a windfall. HarbourVest is accepting a substantial discount in the settlement. HarbourVest's incentive to support the Plan comes from HarbourVest's determination that the Plan is in its best interests. There is also nothing shocking about a settling creditor supporting a plan. Indeed, it would be nonsensical for a creditor to settle its claims and then object to the plan that would pay those claims.

25. More importantly, HarbourVest's votes in Class 9 (Subordinated Claims) are not needed to confirm the Plan. As will be set forth in the voting declaration, Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 8 (General Unsecured Claims) have voted in favor of the Plan.¹¹ In brief, the Plan was approved without HarbourVest's Class 9 vote,

¹⁰ It is currently anticipated that Mr. James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, will testify as to the value of the HCLOF interests to the Debtor's estate.

¹¹ The Debtor anticipates that Mr. Dondero and his related entities will argue that neither Class 7 nor Class 8 voted to accept the Plan because of the votes cast against the Plan in those Classes by current and former Debtor

and the Debtor, therefore, has no need to “buy” HarbourVest’s Class 9 claims. Accordingly, any claims of gerrymandering or vote buying are without merit.

C. CLOH Objection

26. CLO Holdco (and to a much lesser extent, the “Trusts”) object to HarbourVest’s transfer of its interests in HCLOF as part of the settlement. Currently, the settlement contemplates that HarbourVest will transfer 100% of its collective interests in HCLOF to HCMLP Investments, LLC (“HCMLPI”), a wholly-owned subsidiary of the Debtor. As set forth in the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.* (which was appended as Exhibit A to the Settlement Agreement) [Docket No. 1631-1], each of the Debtor, HarbourVest, Highland HCF Advisors, Ltd. (HCLOF’s investment manager) (“HHCFA”), and HCLOF agree that HarbourVest is entitled to transfer its interests to HCMLPI pursuant to that certain *Members Agreement Relating to the Company*, dated November 15, 2017 (the “Members Agreement”),¹² without offering that interest to other investors in HCLOF.

27. The *only* party to object to the transfer of HarbourVest’s interests in HCLOF to HCMLPI is CLO Holdco. CLO Holdco holds approximately a 49.02% interest in HCLOF and is the wholly-owned subsidiary of the DAF, Mr. Dondero’s donor-advised fund. CLO Holdco argues that the Member Agreement requires HarbourVest to offer its interest first to the other investors in HCLOF before it can transfer its interests to HCMLPI. In so arguing, CLO Holdco attempts to create ambiguity in an unambiguous contract and to use that ambiguity to disrupt the Debtor’s settlement with HarbourVest.

28. As an initial matter, the Debtor and CLO Holdco agree that the transfer of HarbourVest’s interests in HCLOF to HCMLPI is governed by Article 6 (Transfers or Disposals

employees, including Mr. Ellington and Mr. Isaac Leventon. The Debtor will demonstrate at confirmation that those objections are without merit and that Class 7 and Class 8 voted to accept the Plan.

¹² A true and accurate copy of the Members Agreement is attached hereto as Exhibit A.

of Shares) of the Members Agreement (an agreement governed by Guernsey law). (CLOH Obj., ¶ 3) The parties diverge, however, as to how to interpret Article 6. The Debtor, as set forth below, believes Article 6 is clear in that it allows HarbourVest to transfer its interests in HCLOF to any “Affiliate of an initial Member party” without requiring the right of first refusal in Section 6.2 of the Members Agreement. CLO Holdco’s position appears to be that the Members Agreement, despite its clear language, should be interpreted as limiting transfers to an “initial Member’s *own* affiliates” and that any other transfer requires the consent of HHCFA and satisfaction of the right of first refusal. (*Id.* (emphasis added)) CLO Holdco’s reading is contrary to the actual language of the Members Agreement.

29. First, Section 6.1 of the Members Agreement provides, in pertinent part:

[REDACTED]

(Members Agmt, § 6.1 (emphasis added)) Under the Members Agreement, “Affiliate” is defined, in pertinent part, as “[REDACTED]

[REDACTED]
(Id., § 1.1) A “Member” in turn is a [REDACTED].” The “initial Member[s]” are the initial Members of HCLOF listed on the first page of the Members Agreement and include the Debtor, HarbourVest, and CLO Holdco.

30. As such, under the plain language of Section 6.1, HarbourVest is entitled – without the consent of any party – to “Transfer” its interests in HCLOF to an “Affiliate” of any of the Debtor, HarbourVest, or CLO Holdco. And that is exactly what is contemplated by the settlement. HarbourVest is transferring its interests to HCMLPI, a wholly owned and controlled subsidiary of the Debtor, and therefore an “Affiliate” of the Debtor. That transfer is indisputably

allowed under Section 6.1; it is a transfer to an “Affiliate of an initial Member.” CLO Holdco may, tongue in cheek, call this structure “convenient” but that sarcasm is an attempt to avoid the fact that the Members Agreement clearly allows HarbourVest to transfer its interest to HCMLPI without the consent of any party.¹³ The fact that CLO Holdco does not now like the language it previously agreed to when CLO Holdco and the Debtor were both controlled by Mr. Dondero is not a reason to re-write Section 6.1 of the Members Agreement.

31. Second, Section 6.2 of the Members Agreement is also unambiguous and, by its plain language, allows HarbourVest to “Transfer” its interests in HCLOF to “Affiliates of an initial Member” (*i.e.*, HCMLPI) without having to first offer those interests to the other Members (such obligation, the “ROFO”). CLO Holdco attempts to create ambiguity in Section 6.2 by arguing that it must be read in conjunction with Section 6.1 and that interpreting the plain language of Section 6.2 to allow HarbourVest to transfer its interests to HCMLPI without restriction makes certain other language surplus and meaningless. (CLOH Obj., ¶ 11-13) Again, CLO Holdco is attempting to create controversy and ambiguity where none exists.

32. Section 6.2 of the Members Agreement provides, in pertinent part:

[REDACTED]

(Members Agmt., § 6.2 (emphasis added)) Like Section 6.1, Section 6.2 is clear on its face. It exempts from the requirement to comply with the ROFO two categories of “Transfers”: (1) Transfers to “affiliates of an initial Member” from Members *other than* CLO Holdco and the

¹³ Although HHCFA’s consent is not necessary for HarbourVest to transfer its interests to HCMLPI, HHCFA will consent to the transfer.

“Highland Principals” (i.e., the Debtor and certain of its employees)¹⁴ and (2) Transfers from CLO Holdco or a Highland Principal to the Debtor, the Debtor’s “Affiliates,” or another Highland Principal. The fact that a narrower exemption is provided to CLO Holdco and the Debtor than to HarbourVest (or any other Member) under Section 6.2 is of no moment; the language says what it says and was agreed to by all Members, including CLO Holdco, when they executed the Members Agreement.

33. In addition, and although not relevant, the language of Section 6.2 makes sense in the context of the deal. Although CLO Holdco and the Debtor may have disclaimed an “Affiliate” relationship, they are related through Mr. Dondero and invest side by side with the Debtor in multiple deals.¹⁵ The different standards in Section 6.2 serve to ensure that HarbourVest’s (or any successor to HarbourVest) right to Transfer its shares without satisfying the ROFO is limited to three parties: (i) HarbourVest’s Affiliates, (ii) the Debtor’s Affiliates, and (iii) CLO Holdco’s Affiliates. This restriction keeps the relative voting power of each Member static and ensures that CLO Holdco and the Debtor, together, will *always* have more than fifty percent of HCLOF’s total interests and that HarbourVest will *always* have less than fifty percent. This counterintuitively also explains the greater restrictions placed on CLO Holdco and the “Highland Principals.” The Highland Principals include certain Debtor employees. Those employees – as well as CLO Holdco and the Debtor – are prohibited from transferring their HCLOF interests outside of the Dondero family. This restriction makes sense. If, for example, a Debtor employee wanted to transfer its interests to an Affiliate of HarbourVest, HarbourVest could have more than fifty percent of the HCLOF interests because of the thinness

¹⁴ “Highland Principals” means: [REDACTED]

[REDACTED] (Members Agmt., § 1.1)

¹⁵ There can be no real dispute that Mr. Dondero effectively controls CLO Holdco.

of the Dondero-family's majority (approximately 0.2%). At the time the Members Agreement was executed, CLO Holdco and the Debtor were under common control. Section 6.2 preserves those related entities' control over HCLOF by restricting transactions that would transfer that control unless the ROFO is complied with.

34. As such, and notwithstanding CLO Holdco's protestations, Section 6.1 and Section 6.2 are consistent as written and clear on their face. This consistency is further evidenced by HCLOF's Articles of Incorporation¹⁶ and HCLOF's offering memorandum, which each include language identical to Section 6.1 and 6.2 of the Members Agreement.¹⁷ It seems highly unlikely, if not implausible, that sophisticated parties such as CLO Holdco would include the exact same language in six separate places over three documents without a reason for that language and without the intent that such language be interpreted as it is clearly written – not as CLO Holdco now wants it to be interpreted. Accordingly, since HarbourVest is transferring its interests to HCMLPI, an Affiliate of an initial Member, the plain language of Section 6.2

¹⁶ See Articles of Incorporation, adopted November 15, 2017, a true and correct copy of which is attached hereto as Exhibit B.



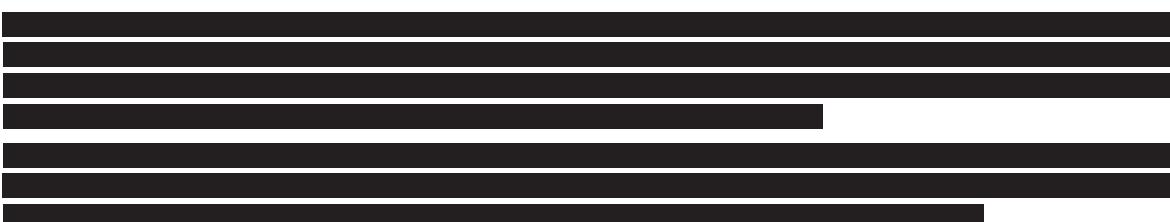
(Articles of Incorporation, § 18.1)



(*Id.*, § 18.2)



¹⁷ See Offering Memorandum, dated November 15, 2017, a true and correct copy of which is attached hereto as Exhibit C.



(Offering Memorandum, page 89)

exempts HarbourVest from having to comply with the ROFO.

35. Third, and finally, CLO Holdco makes the nonsensical argument that because Section 6.2 provides different treatment to similarly situated Members that this Court should rewrite Section 6.2. (CLOH Obj., ¶¶ 15-17) Contracts provide different treatment to ostensibly similarly situated parties all the time and no one objects that that creates an absurd result. It just means that different parties bargained for and received different rights.

36. CLO Holdco's attempt to justify why this Court should re-write the Members Agreement to correct the "disparate treatment" is also unavailing. As an example of the absurd result caused by the "disparate treatment," CLO Holdco states: "[B]ecause the HarbourVest Members are technically Affiliates of an initial member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer." (*Id.*, ¶ 16) The scenario posited by CLO Holdco, however, is *exactly* the scenario prevented by the clear language of Section 6.2. For HarbourVest to obtain control of HCLOF, it would – as a matter of mathematical necessity – need the interests held by CLO Holdco (49.02%) and/or the Highland Principals (1% in the aggregate). Section 6.2, however, *expressly* prohibits CLO Holdco and the Highland Principals from transferring their interests to HarbourVest or its Affiliates without satisfying the ROFO. As set forth above, it is Section 6.2 that prevents control from being transferred away from the Dondero family without compliance with the ROFO. In fact, Section 6.2 would only break down if the limiting language in Section 6.2 were read out of it in the manner advocated by CLO Holdco.

37. Ultimately, Article 6 of the Members Agreement is clear as written and expressly allows HarbourVest to transfer its interests to HCMLPI. If CLO Holdco had an objection to the rights provided to HarbourVest under the Members Agreement, CLO Holdco

should have raised that objection three and a half years ago before agreeing to the Members Agreement. CLO Holdco should not be allowed to create ambiguity in an unambiguous contract or to re-write that agreement to impose additional restrictions on HarbourVest. *See Clardy Mfg. Co. v. Marine Midland Bus. Loans Inc.*, 88 F.3d 347, 352 (5th Cir. 1996) (enforcing the “unambiguous language in a contract as written,” noting that where a contract is unambiguous, a party may not create ambiguity or “give the contract a meaning different from that which its language imports”) (internal quotations omitted); *Texas v. Am. Tobacco Co.*, 463 F.3d 399, 407 (5th Cir. 2006) (“Courts interpreting unambiguous contracts are confined to the four corners of the document, and cannot look to extrinsic evidence to create an ambiguity.”).

38. It should go without saying, but CLO Holdco (and the other parties to the Members Agreement) should also be required to satisfy their obligations under the Members Agreement and execute the “Adherence Agreement” as required by Section 6.6 of the Members Agreement in connection with the Transfer of HarbourVest’s interests to HCMLPI or any other permitted Transfer.

39. Finally, and notably, although CLO Holdco spends considerable time arguing that HarbourVest should be required to comply with the ROFO, nowhere in the CLOH Objection does CLO Holdco state that it wishes to purchase HarbourVest’s interests in HCLOF. This omission is telling. CLO Holdco and the other Objectors have no interest in actually exercising their alleged right of first refusal contained in the Members Agreement. Rather, their only interest is in causing the Debtor to spend time and money responding to a legion of related (and coordinated) objections.¹⁸

¹⁸ See Debtor’s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021 [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q; Exhibit T (email from Mr. Dondero as forwarded to Mr. Ellington stating “Holy bananas..... make sure we object [to the HarbourVest Settlement]”); Exhibit Y.

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WHEREFORE, for the reasons set forth above and in the Motion, the Debtor respectfully requests that the Court grant the Motion.

Dated: January 13, 2021

PACHULSKI STANG ZIEHL & JONES LLP

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Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
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Counsel for the Debtor and Debtor-in-Possession

EXHIBIT 9

003098

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 In Re:) **Case No. 19-34054-sgj-11**
5) Chapter 11
6)
7 HIGHLAND CAPITAL) Dallas, Texas
8 MANAGEMENT, L.P.,) Thursday, January 14, 2021
9) 9:30 a.m. Docket
10)
11 Debtor.) - MOTION TO PREPAY LOAN
12) [1590]
13) - MOTION TO COMPROMISE
14) CONTROVERSY [1625]
15) - MOTION TO ALLOW CLAIMS OF
16) HARBOURVEST [1207]
17)
18)
19)
20)
21)
22)
23)
24)
25)

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
12 UNITED STATES BANKRUPTCY JUDGE.

13 WEBEX APPEARANCES:

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45 Proceedings recorded by electronic sound recording;
46 transcript produced by transcription service.

DALLAS, TEXAS - JANUARY 14, 2021 - 9:41 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We're a little late getting started because we had lots of reading material for the Court today. All right. This is Judge Jernigan, and we have a couple of Highland settings. The HarbourVest matters are the primary thing we have set today, and then we also have a Debtor's motion pursuant to protocols for authority for Highland Multi-Stra to prepay a loan.

All right. Well, let's get a few appearances. First, for the Debtor team, who do we have appearing this morning?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz, John Morris, and Greg Demo here on behalf of the Debtor.

THE COURT: Okay. Thank you.

All right. We have objections on HarbourVest. Who do we have appearing for Mr. Dondero this morning?

MR. WILSON: Your Honor, it's John Wilson, and I'm also joined by Michael Lynn, John Bonds, and Bryan Assink.

THE COURT: Okay. I'm sorry. Could -- the court reporter does yeoman's work in this case. Let me just make sure we got all three of those names. Say again, Mr. Wilson.

1 MR. WILSON: John Bonds and Michael Lynn and Bryan
2 Assink.

3 THE COURT: Oh, okay. So, see, I thought I heard
4 somebody Wilson in all of that, which was why I was pressing
5 the issue.

6 All right. Is Mr. Dondero present on the video for
7 today's hearing?

8 MR. WILSON: I believe he is, Your Honor.

9 THE COURT: Mr. Dondero, could you confirm that you
10 are out there? (No response.) Okay. My court reporter says
11 he sees the name out there. Is he in your office?

12 MR. WILSON: Your Honor, he is appearing remotely
13 from my office. I'm not sure exactly where he's appearing
14 from.

15 THE COURT: Okay. Well, Mr. Dondero, if you're out
16 there and you're speaking up to confirm you're present, we're
17 not hearing you. Maybe your device is on mute. So please
18 unmute yourself.

19 (No response.)

20 THE COURT: All right. I'm going to take some other
21 appearances and you -- you need to try to communicate with
22 your client and let him know I need to confirm he's present.
23 Okay?

24 All right. Meanwhile, let's go to our other Objectors.
25 CLO Holdco. Who do we have appearing today?

1 MR. KANE: John Kane; Kane Russell Coleman & Logan;
2 on behalf of CLO Holdco.

3 THE COURT: All right. Thank you, Mr. Kane.

4 We had an objection from Dugaboy Investment Trust and Get
5 Good Trust. Who do we have appearing?

6 MR. DRAPER: Douglas Draper, Your Honor, for -- for
7 Draper.

8 THE COURT: All right. Thank you, Mr. Draper.

9 All right. I think those were the only written objections
10 we had. Mr. Pomerantz, do you confirm, we don't have any
11 other objectors for the motions set, correct?

12 MR. POMERANTZ: Your Honor, there was those three.

13 THE COURT: I'm sorry. I didn't catch your full
14 sentence.

15 MR. POMERANTZ: That is correct, Your Honor. There
16 were three objections to the motion.

17 THE COURT: Okay. Mr. Clemente, you're there for the
18 Creditors' Committee?

19 MR. CLEMENTE: Yes. Good morning, Your Honor. Matt
20 Clemente on behalf of the Official Committee of Unsecured
21 Creditors.

22 THE COURT: All right. Good morning. Thank you.
23 All right. We have a lot of other folks on the video. I'm
24 not going to go ahead and take a roll call of other lawyers.

25 MS. WEISGERBER: Your Honor?

1 THE COURT: Yes?

2 MS. WEISGERBER: Excuse me, Your Honor. It's Erica
3 Weisgerber from Debevoise on behalf of HarbourVest.

4 THE COURT: Okay.

5 MS. WEISGERBER: And I'm joined by Natasha Labovitz
6 and Dan Stroik --

7 THE COURT: Okay.

8 MS. WEISGERBER: -- from Debevoise as well.

9 THE COURT: Thank you. I was neglectful in not
10 getting your appearance, because, of course, you're at the
11 front and center of this motion to compromise, and I did see
12 that you filed a reply brief yesterday afternoon. Okay.
13 Thank you.

14 All right. Do we have -- do we have Mr. Dondero on the
15 line? I'm going to check again.

16 (No response.)

17 THE COURT: Mr. Dondero's counsel, I cannot hear you,
18 so please unmute your device.

19 MR. WILSON: Your Honor, it appears to me that Mr.
20 Dondero's device was unmuted as soon as you asked if he was
21 available. I sent him a communication a second ago asking if
22 he's having technical difficulties. I have not received a
23 response, so I --

24 MR. DONDERO: Hello. Can anybody hear me?

25 THE COURT: Oh.

1 MR. WILSON: Okay. I hear him.

2 THE COURT: Mr. Dondero?

3 MR. DONDERO: Hello?

4 THE COURT: Is that you?

5 MR. DONDERO: Yeah, it is. I've been on. I've heard
6 everything since the beginning. It's just we've had technical
7 difficulties. I couldn't use the Highland offices. We've
8 been trying to set up something else.

9 THE COURT: All right.

10 MR. DONDERO: But I'm on now, if -- yes.

11 THE COURT: All right. Very good. Well, I'm glad
12 we've got you.

13 All right. Well, Mr. Pomerantz, how did you want to
14 proceed this morning?

15 MR. POMERANTZ: Your Honor, we could take up the
16 HarbourVest motion first, and I will turn it over to John
17 Morris. He and Greg Demo will be handling that. And then
18 after that we can handle the other motion, which is unopposed.

19 THE COURT: All right. Mr. Morris?

20 MR. KANE: Your Honor, this is -- sorry. This is
21 John Kane for CLO Holdco. Just very briefly, if I may. And
22 this will affect, I think, the Debtor's case in chief, so I'll
23 expedite things a little bit, I believe.

24 CLO Holdco has had an opportunity to review the reply
25 briefing, and after doing so has gone back and scrubbed the

1 HClOOF corporate documents. Based on our analysis of Guernsey
2 law and some of the arguments of counsel in those pleadings
3 and our review of the appropriate documents, I obtained
4 authority from my client, Grant Scott, as Trustee for CLO
5 Holdco, to withdraw the CLO Holdco objection based on the
6 interpretation of the member agreement.

7 THE COURT: All right. Well, thank you for that, Mr.
8 Kane. I think that -- that eliminates one of the major
9 arguments that we had anticipated this morning. So, thank you
10 for that.

11 Any other housekeeping matters that maybe someone had that
12 I didn't ask about?

13 MS. MATSUMURA: Yes, Your Honor. This is Rebecca
14 Matsumura from King & Spalding representing Highland CLO
15 Funding, Ltd. I just wanted to put on the record, we -- our
16 client had requested that some of its organizational documents
17 be filed under seal. But we have given permission for the
18 parties to present the relevant excerpts, to the extent it's
19 still relevant after Mr. Kane's announcement, in court. And
20 we'd just ask that the underlying documents remain sealed, but
21 we're not going to object if they show them on a PowerPoint or
22 anything like that.

23 So, to the extent that you had that on your radar, I just
24 wanted to clear that up for the proceedings.

25 THE COURT: All right. Well, I did sign an order

1 late last night. I don't know if it's popped up on the
2 docket.

3 MS. MATSUMURA: Yes, Your Honor. That's what this
4 referred to. That was what -- these are the documents that
5 were being sealed. And so I just wanted to note, if you --
6 you know, if the Debtor puts up an excerpt of those documents
7 and you're like, wait a minute, didn't I seal those, that we
8 were the party that requested them be under seal and we're
9 fine with them being shown in court, as long as the underlying
10 documents aren't publicly accessible.

11 THE COURT: Okay. Got you. Thank you.

12 All right. Any other housekeeping matters?

13 MR. MORRIS: Yes, Your Honor. This is John Morris
14 from Pachulski Stang for the Debtor. Good morning.

15 THE COURT: Good morning.

16 MR. MORRIS: The only other matter that I wanted to
17 raise, and I can do it now or I can do it later, or Your Honor
18 may tell me that it's not appropriate to do at this time, is
19 to schedule the Debtor's motion to hold Mr. Dondero in
20 contempt for violation of the TRO.

21 THE COURT: All right. Well, let's do that at the
22 conclusion today. And please make sure I do it. I think I
23 was going to address this last Friday, and we went very late
24 and it slipped off my radar screen. But I did see from my
25 courtroom deputy that you all were reaching out to her

1 yesterday to get this set, and then Mr. Dondero's counsel
2 reached out to her and said, We're going to file an objection
3 to a setting next Wednesday, or I think you had asked for a
4 setting next Tuesday or Wednesday.

5 MR. MORRIS: I did.

6 THE COURT: And I don't -- I don't know if that
7 response/objection was ever filed last night. I haven't seen
8 it if it was. So, we'll -- please, make sure I don't forget.
9 We'll take that up at the end of today's matters. All right.
10 Well, --

11 MR. MORRIS: All right. So, --

12 MS. WEISGERBER: Your Honor, one last housekeeping
13 item from -- I'm joined this morning by Michael Pugatch of
14 HarbourVest, who will present some testimony this morning. I
15 just want to confirm he's on the line and confirm no
16 objections to him sitting in for the rest of the hearing.

17 THE COURT: All right. Mr. Pugatch, this is Judge
18 Jernigan. Could you respond? Are you there with us?

19 MR. PUGATCH: Yes. Good morning, Your Honor. Mike
20 Pugatch from HarbourVest here.

21 THE COURT: All right. Very good. I think we had
22 you testify once before in the Acis matter, if I'm not
23 mistaken. Maybe. Maybe not. Maybe I saw a video deposition.
24 I can't remember.

25 All right. So, we're going to let Mr. Pugatch sit in on

1 this. Anyone want to say anything about that? I consider him
2 a party representative, so I don't -- I don't think anyone
3 could invoke the Rule.

4 All right. Very good. Well, let's go forward if there
5 are no more housekeeping matters.

6 MR. MORRIS: Okay.

7 THE COURT: Mr. Morris?

8 MR. MORRIS: Thank you. Thank you very much, Your
9 Honor. John Morris; Pachulski Stang Ziehl & Jones; for the
10 Debtor.

11 It's a rather straightforward motion today. It's a motion
12 under Rule 9019, pursuant to which the Debtor requests the
13 Court's authority and approval to enter into a settlement
14 agreement with HarbourVest that will resolve a number of
15 claims that HarbourVest has filed against the Debtor.

16 What I -- the way I propose to proceed this morning, Your
17 Honor, is to give what I hope is an informative but relatively
18 brief opening statement. I'll defer to HarbourVest and its
19 counsel as to whether they want to make a presentation in
20 advance of the offer of evidence. Any objecting party, I
21 suppose, should then be given the opportunity to present their
22 case to the Court. Then the Debtor will call Jim Seery, the
23 Debtor's CEO and CRO. We will offer documents into evidence.
24 I would propose then that the objecting parties take the
25 opportunity to ask Mr. Seery any questions they'd like on the

1 matter.

2 After the Debtor rests, I think HarbourVest would like to
3 put Mr. Pugatch on the stand to offer some testimony on their
4 behalf. And I think that that will conclude the case. We can
5 finish up with some closing arguments as to what we believe
6 the evidence showed, but that's the way that I'd like to
7 proceed, if that's okay with the Court.

8 THE COURT: All right. That sounds fine.

9 OPENING STATEMENT ON BEHALF OF THE DEBTOR

10 MR. MORRIS: Okay. So, as I said, Your Honor, this
11 is a -- this should be a very straightforward motion under
12 Rule 9019. The standard is well-known to the Court. There
13 are four elements to a 9019 motion. The Debtor clearly has
14 the burden of proof on each one. And we easily meet that
15 burden, Your Honor.

16 The standard, just to be clear, the first part is that we
17 have to establish a probability of success, with due
18 consideration for uncertainty of law and fact. The second one
19 is the complexity, likely duration, expense and inconvenience
20 of the litigation. The third part of the test is the
21 paramount interest of creditors. And the fourth part of the
22 test is whether or not the proposed settlement was reached
23 after arm's-length negotiations.

24 The Debtor believes that it easily meets this standard,
25 and frankly, is a little bit frustrated that it's being forced

1 to incur the expense by Mr. Dondero in going through this
2 process.

3 A plain reading, a fair reading of the economics here
4 relative to the claim shows that this is a very reasonable
5 settlement. I don't need to go beyond that, Your Honor. I
6 don't even need to use the word reasonable. It surely meets
7 the lowest standard.

8 We've prepared a couple of demonstrative exhibits, Your
9 Honor. I'm going to use them with Mr. Seery. But I'd like to
10 just put one up on the screen now, if I may.

11 Ms. Canty, can you please put up Demonstrative Exhibit #3?

12 Demonstrative Exhibit #3 is an outline of the economics of
13 the settlement. It includes the various pieces, the
14 components that the parties have agreed to. And it shows, at
15 least from the Debtor's perspective, just what HarbourVest is
16 being given here.

17 Up on the screen is a demonstrative exhibit. It has
18 citations to the evidence that will be admitted by the Court.
19 The first line shows that HarbourVest will receive a \$45
20 million allowed general unsecured nonpriority claim. And that
21 -- that can be found at Debtor's Exhibit EE, Exhibit 1, at
22 Page 2.

23 That claim is discounted by the expected recovery that
24 general unsecured creditors are supposed to get. As of
25 November, in the liquidation analysis that was part of the

1 disclosure statement -- that's the citation in the footnote --
2 the Debtor believed that unsecured creditors were estimated to
3 recover approximately eighty-seven and a half cents on the
4 dollar. And so we just did the arithmetic there to get to the
5 net economic value of the proposed general unsecured claim.

6 And from that, we reduced \$22-1/2 million because that is
7 the net asset value of HarbourVest's interest in HCLOF, which,
8 pursuant to the settlement agreement, it will transfer back to
9 the Debtor, so that the net economic value is approximately
10 \$16.8 million.

11 You will hear testimony from Mr. Seery that this number
12 is, in fact, overstated, and it's overstated because, since
13 the time the disclosure statement was filed in November, a
14 number of events have occurred that will -- that have caused
15 the estimated recovery percentage to be reduced from
16 approximately 87-1/2 percent to something lower than that. We
17 don't have the exact number, Your Honor, but Mr. Seery will --
18 and the evidence will show that there's been more expenses,
19 that there's been some resolution of certain claims. There's
20 been some positive issues, too. But that number is probably
21 in the 70s somewhere.

22 And in any event, I think the point here is, Your Honor,
23 HarbourVest invested \$80 million in HCLOF, which was going to
24 participate in the investment in CLOs. They filed a claim for
25 \$300 million, through treble damages and other claims. But

1 the net economic impact of this is going to be somewhere
2 probably in between \$12 and \$14 million. I'll let Mr. Seery
3 give more precision to that. And it represents less than -- a
4 less than five percent recovery on the total claim.

5 And we think it's important for the Court to keep that in
6 mind. What are the economics here? Are we overpaying? Is
7 this an unreasonable settlement? And I think the evidence
8 will show that the Debtor is not, but that this settlement
9 that you see before you was the product of arm's length, and
10 I'm going to go in reverse order of the four-part test under
11 9019.

12 So, the last part is whether or not the settlement, the
13 proposed settlement was the product of arm's-length
14 negotiation. You'll hear lots of evidence that this
15 settlement that's up on the screen right now very much was the
16 product of arm's-length negotiation.

17 The third part of the test, Your Honor, is whether it
18 meets the paramount interest of creditors. You know,
19 regrettably, Mr. Dondero is the only purported creditor who is
20 objecting here. He may have done so through different
21 vehicles, but every objecting party here is a debtor [sic]
22 owned and controlled by Mr. Dondero. No other creditor -- not
23 the Creditors' Committee, UBS, Acis, Mr. Terry, Mr. Daugherty
24 -- nobody is objecting to this settlement except for Mr.
25 Dondero. And we believe that that highlights the Debtor's

1 ability to meet the third prong of the test, and that is these
2 are -- this settlement is in the paramount interest of
3 creditors.

4 Again, going in reverse, the second part of the test is
5 the complexity, duration, and expense of litigation. There
6 will be no disputed evidence that we meet -- the Debtor easily
7 meets this prong of the test. The evidence is going to show
8 that HarbourVest's claim is based on fraud, fraud in the
9 inducement, fraudulent statements and omissions, the kind of
10 case, Your Honor, that I'm sure you're familiar with that is
11 incredibly fact-intensive, that will be incredibly difficult
12 to navigate through. It will be prolonged, it will be
13 expensive, because you're necessarily relying on he said/she
14 said, basically. And so we're going to have to get testimony
15 from every person that spoke in connection with the events
16 leading up to the transaction. So we think the second prong
17 will be easily met, Your Honor.

18 And then the last prong -- the first prong, if you will --
19 is the likelihood of success on the merits. We think that the
20 settlement, the economic recovery that's up on the screen
21 here, which ultimately will be less than five percent of the
22 claimed amount, in and of itself shows that the settlement is
23 consistent with the Debtor's perception of its likely success
24 on the merits. I'm certain that HarbourVest disagrees, but
25 that's okay, we're here today and that's the Debtor's view,

1 and the Court is here to assess the Debtor's business judgment
2 and whether the Debtor has properly analyzed the issues and
3 gone through the process. And the evidence will show
4 conclusively that it will. That it has.

5 Mr. Seery will testify at some length as to the risks that
6 he saw. I think that you'll hear counsel for Mr. Dondero ask
7 both Mr. Seery and Mr. Pugatch a number of questions designed
8 to elicit testimony about this defense or that defense. And
9 it's a little -- it's a little ironic, Your Honor, because,
10 really, every defense that they're going to try to suggest to
11 the Court was a valid defense is a defense that the Debtor
12 considered. In fact, it's, you know, it's a little spooky,
13 how they've -- how they've been able to identify kind of the
14 arguments that the Debtor had already considered in the
15 prosecution of their objections here.

16 But be that as it may, the evidence will conclusively show
17 that the Debtor acted consistent with its fiduciary duties,
18 acted in the best interests of the Debtor's estate, acted
19 completely appropriately here in getting yet another very
20 solid achievement for the Debtor, leaving very few claims that
21 are disputed at this point, all but one of which I believe are
22 in the hands of Mr. Dondero.

23 So, that's what we think that the evidence will show.

24 I do want to express my appreciation to Mr. Kane for
25 reflecting on the arguments that we made with respect to the

1 ability of the Debtor to engage in the transfer or the
2 acquisition of the asset from HarbourVest. I would -- I would
3 respectfully request that we just enter into a short
4 stipulation on the record reflecting that the Debtor's
5 acquisition of HarbourVest's interests in HCLOF is compliant
6 with all of the applicable agreements between the parties.

7 And with that, Your Honor, I look forward to putting Mr.
8 Seery on the stand and presenting the Debtor's case.

9 THE COURT: All right. Other opening statements?

10 OPENING STATEMENT ON BEHALF OF CLO HOLDCO, LTD.

11 MR. KANE: Yes, Your Honor. Sorry. John Kane on
12 behalf of CLO Holdco.

13 In response to Mr. Morris, I'm not going to enter into a
14 stipulation on behalf of my client, but the Debtor is
15 compliant with all aspects of the contract. We withdrew our
16 objection, and we believe that's sufficient.

17 THE COURT: All right. Well, I'm content with that.

18 Other opening statements?

19 OPENING STATEMENT ON BEHALF OF HARBOURVEST

20 MS. WEISGERBER: Your Honor, Erica Weisgerber on
21 behalf of HarbourVest.

22 HarbourVest joins in Mr. Morris's comments in support of
23 the settlement, and we believe that the question of whether
24 the settlement between HarbourVest and the Debtor satisfies
25 the Rule 9019 standard is not even a close one.

1 Some Objectors have made arguments about the merits of
2 HarbourVest's claims, which is why we're here. As Your Honor
3 will hear this morning, HarbourVest has meaningful and
4 meritorious claims against Highland, but made the business
5 decision to avoid the time, expense, and inherent risk of
6 litigation in the interest of preserving value, both for
7 itself and for the estate.

8 Today, Michael Pugatch, a managing director of
9 HarbourVest, will testify before the Court. He'll explain
10 that HarbourVest claims against Highland arise out of certain
11 misrepresentations and omissions by Highland to HarbourVest in
12 connection with HarbourVest's purchase of an interest in
13 HCLOF, one of Highland's managed funds. Those
14 misrepresentations and omissions, as Your Honor will hear,
15 relate to Highland's litigation with its former employee,
16 Joshua Terry, and transfers that were conducted in 2017 to
17 strip Acis of value and prevent Mr. Terry from collecting on
18 an \$8 million judgment.

19 Mr. Pugatch will further explain that HarbourVest would
20 not have invested in HCLOF had it known the underlying facts
21 about those Acis transfers.

22 Mr. Pugatch will also testify that not only did
23 HarbourVest not know about those transfers, it learned about
24 those transfers when it was accused of orchestrating the
25 transfers itself in the Acis bankruptcy. Your Honor will hear

1 that the Acis trustee sought extensive discovery from
2 HarbourVest after numerous accusations that HarbourVest was
3 behind the transfers.

4 Mr. Pugatch will also testify that Highland charged legal
5 fees for itself and its affiliates to HCLOF, essentially
6 forcing HCLOF to fund the litigation involving the Acis
7 bankruptcy and Mr. Terry.

8 In total, HarbourVest's claims for damages are over a
9 hundred million dollars in investment-related losses, lost
10 profits, legal fees inappropriately charged to HCLOF, its own
11 legal fees. And that's before interest or trebling damages.

12 But HarbourVest stands ready to litigate its claims, but
13 following hard-fought and extensive negotiations with the
14 Debtors, the parties reached the settlement that's now before
15 the Court. Mr. Pugatch's testimony regarding the strong
16 factual bases for HarbourVest's claims against Highland and
17 its recoverable damages will further underscore the risks that
18 the Debtors faced if they chose to litigate these claims, and
19 why this settlement is fair, equitable, and in the best
20 interest of the estate.

21 THE COURT: All right. Thank you, Counsel.

22 Other opening statements?

23 OPENING STATEMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

24 MR. DRAPER: Your Honor, this is Douglas Draper on
25 behalf of one of the Objectors. I'd like to just make a few

1 comments with respect to what I've heard and what the Court is
2 going to hear.

3 The first issue I'd like to address is the comment by
4 counsel for the Debtor that no other party has objected. The
5 9019 motion is one of the issues that this Court has to rule
6 on, whether or not there was an objection or not. So the fact
7 that this may be -- bankruptcy is not a popularity contest and
8 not an issue of who votes for what and doesn't vote. This,
9 along with the 1129(a) tests, are clearly within your
10 province, and you need to listen carefully because you'll have
11 to make your own independent analysis whether my objection is
12 correct or incorrect.

13 Two other points I'd like to make that I think are very
14 salient. Number one is, if you look at the Debtor's
15 disclosure statement, it basically took the position that the
16 HarbourVest claim is of little or no value. And lo and
17 behold, thirty days later, there's a settlement that brings
18 about a significant recovery to HarbourVest. The timing is
19 interesting, and I think the Court needs to pay careful
20 attention to what transpired between the two dates.

21 And then the last point I'd like to make is, as you listen
22 to the evidence, and what I learned abundantly clear from
23 hearing the depositions, is that the claim of HarbourVest, if
24 there is a claim at all, is probably one hundred percent --
25 should be subordinated in that it appears to arise out of the

1 purchase or sale of a security. And, again, I would ask the
2 Court to listen carefully to this because that's what it
3 appears to be and that's what the evidence is going to show to
4 the Court.

5 THE COURT: All right. Mr. Draper, let me clarify
6 something I'm not sure if I heard you say or not. Were you
7 saying that the Court still needs to drill down on the issue
8 of whether the Debtor can acquire HarbourVest's interest in
9 HCLOF?

10 MR. DRAPER: No.

11 THE COURT: Okay. I was confused whether you were
12 saying I needed to take an independent look at that, now that
13 the objection has been withdrawn of Holdco. You are not
14 pressing that issue?

15 MR. DRAPER: No, I am not. Basically, I think it's
16 the fairness of the settlement. I think the transferability
17 of the interest is separate and apart from the fairness of the
18 settlement itself. I think the fairness -- the
19 transferability was a contractual issue between two parties
20 that the Court does not have to drill down on.

21 THE COURT: All right. I have another question for
22 you. I want to clarify your client's standing. Tell me --
23 I'm looking through a chart I printed out a while back. I
24 guess Dugaboy Investment Trust filed a couple of proofs of
25 claim; is that right?

1 MR. DRAPER: Yes.

2 THE COURT: Okay. What --

3 MR. DRAPER: And objections are pending.

4 THE COURT: Pardon?

5 MR. DRAPER: Objections to those claims are pending
6 before the Court, Your Honor, --

7 THE COURT: Okay.

8 MR. DRAPER: -- and have not been litigated.

9 THE COURT: And what about Get Good Trust?

10 MR. DRAPER: Get Good Trust has a proof of claim also
11 that objections are pending to. Pending.

12 THE COURT: Okay. I don't want to get too
13 sidetracked here, but I know standing was -- was mentioned as
14 a legal argument today. What is the basis for those proofs of
15 claim?

16 MR. DRAPER: The first one is, with respect to the
17 proof of claim for Dugaboy, there is an investment that
18 Dugaboy made that was then funneled, we believe, up to the
19 Debtor. And the -- the loan that exists, we believe is a
20 Debtor loan, as opposed to a loan to the entity that we made
21 the loans to.

22 And, again, it's a matter that the Court is going to hear.
23 The claim may or may not be allowed. It has not been
24 disallowed yet.

25 The second part to the Dugaboy ownership is we own an

1 interest in the Debtor. And so we are, in fact, a party in
2 interest.

3 THE COURT: Okay.

4 MR. DRAPER: It may be a small interest, but it is an
5 interest.

6 THE COURT: It has a limited partnership interest in
7 the Debtor?

8 MR. DRAPER: Yes.

9 THE COURT: Is that correct?

10 MR. DRAPER: Yes.

11 THE COURT: Okay. Well, I'll move forward. Thank
12 you.

13 Does that cover -- any other opening statements? I think
14 that covered everyone who was -- who filed some sort of
15 pleading today. No.

16 MR. WILSON: Your Honor, John Wilson on behalf of --

17 THE COURT: I'm sorry. I'm sorry.

18 MR. WILSON: -- Mr. Dondero.

19 THE COURT: I missed Mr. Dondero's counsel. I knew
20 we had visited at some point this morning. I just got
21 confused there. Go ahead, Mr. Wilson.

22 MR. WILSON: No problem, Your Honor. I was just
23 going to say that we will reserve our comments until after the
24 conclusion of the testimony.

25 THE COURT: All right. Very well.

1 Mr. Morris, you may call your first witness.

2 MR. MORRIS: Thank you, Your Honor. Before I do,
3 just two very, very quick points.

4 THE COURT: Okay.

5 MR. MORRIS: To be clear, Dugaboy's interest in the
6 Debtor is 0.1866 percent. Less than two-tenths of one
7 percent.

8 Secondly, the argument that Mr. Draper just made with
9 respect to subordination is one that appears in nobody's
10 papers. And, in fact, not only doesn't it appear in anybody's
11 papers, but Mr. Dondero, I believe, specifically took issue
12 with the fact that a portion of the consideration that
13 HarbourVest would receive would be on a subordinated basis,
14 and he would -- and I think he took the position there is no
15 basis to give them a subordinated claim.

16 So, I just wanted to point those items out to the Court,
17 not that I think either one makes a large difference today,
18 but I do want to deal with the facts.

19 THE COURT: Thank you.

20 MR. MORRIS: The Debtor would call -- you're welcome,
21 Your Honor. The Debtor calls Mr. James Seery.

22 THE COURT: All right. Mr. Seery, welcome back to
23 virtual court. If you could say, "Testing, one, two" so I can
24 see you and swear you in.

25 MR. SEERY: Testing, one, two.

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1 THE COURT: All right. I heard you but I'm not yet
2 seeing your video. Is your video turned on?

3 MR. SEERY: Video is on. Yes, Your Honor.

4 THE COURT: Okay. I see you now. Please raise your
5 right hand.

6 JAMES SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. MORRIS:

11 Q Good morning, Mr. Seery. Can you hear me?

12 A I can. Thank you, Mr. Morris.

13 Q Okay. Let's just cut to the chase here. Are you familiar
14 with HarbourVest's claims filed against the Debtor?

15 A I am, yes.

16 Q And did you personally review them?

17 A I did, yes.

18 Q Do you recall that over the summer the Debtor objected to
19 HarbourVest's claim?

20 A Yes, we did.

21 Q Why -- can you explain to the judge why Harbour -- why the
22 Debtor objected to HarbourVest's claim last summer?

23 A Sure. The HarbourVest claims, I believe there are about
24 six of them, initially were filed, and they were -- they were
25 relatively vague in terms of what the specifics of the claims

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1 were.

2 So, we saw the claims but didn't, frankly, pay a lot of
3 attention to the underlying transaction that was referred to
4 in the proofs of claim and the losses that HarbourVest had
5 claimed to suffer -- to suffer with respect to their purchase
6 of securities related to HCLOF and the damages caused by the
7 Acis case. So we filed a pretty pro forma objection. I
8 believe it was a simply stated objection that we didn't have
9 any record that there was anything in the Debtor's books and
10 records that they had a valid claim for any amount against the
11 Debtor.

12 Q Are you aware that HarbourVest subsequently filed a
13 response to the Debtor's objection to their claims?

14 A Yes. Yes, I am aware.

15 Q And did you familiarize yourself with that particular
16 response?

17 A I did indeed. It was a pretty extensive response, really
18 developing the full panoply of their claims, which included
19 claims for expenses relating to the Acis case, which
20 HarbourVest viewed as being improperly charged to HCLOF by its
21 manager, which is effectively Highland. Those expenses,
22 HarbourVest took the view, were excessive, had nothing to do
23 with the investment, and were simply a pursuit of a personal
24 vendetta against Mr. Terry and his interests by Mr. Dondero,
25 and using HCLOF's money to actually pursue those interests.

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1 In addition, and this was the first time we saw that,
2 HarbourVest brought forth its claims that it was entitled to
3 effectively rescind the transaction. And I say rescind the
4 transaction: In security parlance, they claim that they were
5 induced by fraud, I think as most are -- to enter into the
6 transaction.

7 As most are aware, the liability limitations in the OMs
8 and the exculpation in the documents are pretty broad, and
9 HarbourVest's position was that they weren't going to be
10 subject to those limitations because the actual transaction
11 that they entered into was a fraud on them, designed by Mr.
12 Dondero, Mr. Ellington, and the Highland team.

13 Q All right. Let's talk about your understanding, the
14 Debtor's understanding of the factual background to
15 HarbourVest's claim. What is your understanding of the
16 investment that HarbourVest made?

17 A Well, HarbourVest made an investment in the Highland CLO
18 business. The Highland CLO business was -- was Acis. And
19 effectively, the business had been separated, but in name
20 only. Acis was just a shell, with a few partners --
21 obviously, Mr. Terry as well -- but it was all Highland
22 personnel doing all the work.

23 And what they were trying to do with Acis was, in essence,
24 resuscitate a business that had been in a bit of a decline
25 from its pre-crisis heyday.

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1 They were looking to take additional outside capital.
2 They would -- they would pay down or take money out of the
3 transaction, Highland would, or ultimately Mr. Dondero, and
4 they would -- they would seek to invest in Acis CLOs,
5 Highland's 1.0 CLOs. And then with respect to the Acis CLOs,
6 and potentially new CLOs, but with the Acis CLOs, they'd seek
7 to reset those and capture what they thought would be an
8 opportunity in the market to -- to really use the assets that
9 were there, not have to gather assets in the warehouse but be
10 able to use those assets to reset them to market prices for
11 the liabilities and then make money on the equity.

12 Q Do you have an understanding --

13 A Then --

14 Q I'm sorry. Go ahead.

15 A Why don't I continue? So, the transaction, they found
16 HarbourVest as a potential investor, and the basis of the
17 transaction was that they would make an investment into Acis.

18 Shortly before the transaction, and while they were doing
19 diligence, Mr. Terry received his arbitration award. I
20 believe that was in October of 2017. The transaction with
21 HarbourVest closed in mid- to late November of 2017. But Mr.
22 Terry was not an integral part. Indeed, he wasn't going to be
23 a key man. He had been long gone from Highland by that time.

24 What the -- I think you asked me originally what the basis
25 of their claim was. The transaction went forward, and the

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1 basis of their claim is that they really were never -- nothing
2 was disclosed to them about the nature of the dispute with Mr.
3 Terry other than in the highest-level terms; the animosity
4 with respect to which that dispute was held by Highland and
5 potentially Mr. Terry; and really, how those costs would be
6 borne and risks be borne by the investment that they were
7 making.

8 That was, in essence, the transaction and the high-level
9 view of their claim.

10 Q Okay. Just a few very specific facts. Do you have an
11 understanding as to how much HarbourVest invested and what
12 they got in exchange for that investment?

13 A Yeah. HarbourVest invested in a couple tranches, and I
14 forgot the exact dates, but approximately \$75 million
15 originally, and then they added another five. Some
16 distributions were made in the first half of 2018, putting
17 their net investment in the mid-seventies on the investment,
18 which now is worth about 22-1/2 million bucks.

19 Q And what percentage interest in HCLOF did HarbourVest
20 acquire, to the best of your knowledge?

21 A They have 49.98 percent of HCLOF. HCLOF, just to refresh
22 -- the Court is, I think, well aware of this, but to refresh,
23 is a Guernsey entity. Not -- not atypical for structures of
24 this type to use offshore jurisdictions and sell the
25 securities under -- at least to U.S. -- can't sell them to

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1 U.S. investors unless they qualify, and these are sold under
2 Reg S to -- to investors that otherwise qualify. And
3 HarbourVest was investing in that transaction through the
4 Guernsey structure.

5 Q And do you have an understanding as to who owned the 50-
6 plus percent of HCLOF that HarbourVest was not going to
7 acquire?

8 A Yeah. There's -- you can tell by the name. HCLOF is
9 Highland CLO Funding. This is a Highland vehicle. So
10 Highland owned and controlled the vehicle. The DAF, which is
11 -- which is Dondero-controlled trusts, have the -- 49 percent.
12 Highland has, I believe, around .63-65 percent directly. And
13 then Highland employees at the time who were involved in the
14 business owned another small percentage.

15 So the majority was going to be controlled by Highland
16 through its control of DAF and its control of the employees
17 that worked for it. HarbourVest would be a minority investor.

18 Q Okay. And I believe you testified that the investment was
19 made in mid-November; is that right?

20 A That's correct. I think it was the 15th, may have been
21 the 17th of November.

22 Q And do you recall when in October the Terry arbitration
23 award was rendered?

24 A It was about a month before. I think it was right around
25 the 20th, the 17th to the 20th. I may be slightly wrong on

1 each of those dates.

2 Q Okay. What is your understanding as to what happened
3 after the issuance of the award that is the basis or at least
4 one of the bases for HarbourVest's claim?

5 A I don't think there's -- I don't think there's any
6 dispute. And there certainly are judicial findings. Dondero
7 and Highland went about stripping Acis of all of its assets.
8 So, remember that Acis is not a separate standalone company,
9 in any event. It's controlled and dominated completely by
10 Highland at the time. But it did have contracts. And those
11 contracts had value.

12 So the first idea was to strip out the management contract
13 and put it into a separate vehicle, which we called HCF
14 Advisor, which Highland still owns. The second piece was to
15 strip out some valuable assets, the risk retention piece,
16 which was a loan that in essence was equity that Highland had
17 put into Acis but structured as a loan, as many of the
18 transactions we'll see down the road are, in order to deal
19 with some -- avoid taxes in any way possible. And that
20 structure, that value moved value out of Acis for the express
21 purpose of trying to run, in essence, the Highland business
22 back in Highland.

23 Remember, as I said, Acis is just a Highland business
24 moved to a separate shell. When Mr. Terry got his arbitration
25 award against Acis and was seeking to enforce it, it was

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1 pretty straightforward, let's take all the assets -- Dondero
2 scheme -- let's take all the assets and move them back into
3 Highland so Terry can't get anything.

4 Q And how does that scheme relate to the HarbourVest claim,
5 to the best of your knowledge?

6 A Well, HarbourVest -- HarbourVest's position is that they
7 invested in Acis and -- and whether Acis was called Acis or
8 called Highland, it doesn't really matter; there were valuable
9 assets in the -- in the entity that they were going to be
10 investing in through the equity in these CLOs and some of the
11 debt securities in those CLOs.

12 And then the stripping out and the fraudulent conveyances
13 out of Acis caused them damages because that's what left the
14 damage to Mr. Terry.

15 The quick math on Acis, by the way, is Acis has probably
16 lost, total damages, 175 million bucks. And that's pretty
17 easy. DAF lost 50. HarbourVest lost 50. Fifteen million of
18 fees charged to HCLOF. Another five million of fees, at
19 least, incurred by Mr. Terry. Ten million that went to Mr.
20 Terry, 15 to Highland fees, another five, plus Mr. Terry's
21 settlement in this case, over eight million bucks.

22 So HarbourVest's position, which, on a factual basis, you
23 know, is problematic for the estate, is, wait a second, we
24 invested in this vehicle with Highland. That was supposed to
25 invest in Highland CLOs. They were called Acis, but they were

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1 Highland CLOs. And then you went about causing tremendous
2 damage to that vehicle that we ultimately were investing in,
3 and then charge us for the pleasure.

4 Q You used the phrase earlier "OM," I believe.

5 A Offering memorandum.

6 Q Offering memorandum? Can you just explain to the Court
7 your understanding of what an offering memorandum is?

8 A Typically, under U.S. law, and foreign jurisdictions have
9 similar laws, you have to have a document that explains the
10 securities that you're selling. And it goes into extreme
11 detail about the securities and the risks related to those
12 securities.

13 And the idea is not to have a document that tells you
14 whether it's a good investment or a bad investment, but it's a
15 document that discloses to the potential investor all of the
16 risks with respect to that security or related to the
17 investment over the duration of the security. It doesn't
18 predict the future, but it's supposed to make sure that it
19 gives you a very clean view of the past and a very clean view
20 of what the facts from the past are and how they would
21 implicate the future of the investment.

22 Q And in the course of its diligence, did the Debtor have an
23 opportunity to review the offering memorandum in the context
24 of the claims that were being asserted by HarbourVest?

25 A Oh, absolutely. It was originally effectively -- it's an

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1 HCLOF offering memorandum. But as I said, HCLOF was managed
2 and controlled by Highland, and Highland originally prepared
3 it. And then, of course, in connection with -- with this
4 dispute and these claims, we reviewed it, both myself and my
5 legal team.

6 Q All right.

7 MR. MORRIS: Your Honor, the offering memorandum is
8 on the Debtor's exhibit list, and I think this is an
9 appropriate time to move into evidence Debtor's Exhibits A
10 through EE, all of which appear at Docket No. 1732.

11 THE COURT: 1732?

12 MR. MORRIS: It's the Debtor's Second Amended Witness
13 and Exhibit List.

14 THE COURT: All right. Any objection to admission of
15 A through EE?

16 MR. DRAPER: Douglas Draper. No objection, Your
17 Honor.

18 THE COURT: All right. Mr. --

19 MR. MORRIS: May I proceed?

20 THE COURT: Yeah. Mr. Wilson, did you want to
21 confirm no objection?

22 (Echoing.)

23 THE COURT: All right. Hearing no objection,
24 Debtor's A through EE are admitted.

25 (Debtor's Exhibits A through EE are received into

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1 evidence.)

2 THE COURT: Go ahead, Mr. Morris.

3 MR. MORRIS: Thank you, Your Honor. The offering
4 memorandum itself is one of the documents that we filed under
5 seal, and we did so at the request of counsel to HCLOF. But
6 HCLOF has consented to our sharing up on the screen certain
7 very limited provisions of the document, without waiving the
8 request that the agreement otherwise be maintained under seal.

9 THE COURT: All right.

10 MR. MORRIS: So may I proceed on that basis, Your
11 Honor?

12 THE COURT: You may. Uh-huh.

13 MR. MORRIS: Okay. Ms. Carty, can you please put up
14 on the screen Demonstrative Exhibit #1? Okay. Can we just --
15 is there a way to just expand that just a bit, Ms. Carty?
16 Thank you very much. And if we could just scroll it up?
17 Thank you very much. Perfect.

18 Okay. So, Your Honor, this, as the footnote says, is an
19 excerpt from the offering memorandum that can be found at
20 Debtor's Exhibit AA. Double A. And this particular portion
21 of the offering memorandum is at Page 35.

22 THE COURT: Okay.

23 BY MR. MORRIS:

24 Q Mr. Seery, have you seen this portion of the offering
25 memorandum before?

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1 A Yes, I have. But before I continue, I just -- I should
2 have checked. Are you able to hear me clearly? Am I speaking
3 too quickly or am I cutting out? I just want to make sure.
4 I'm using a different set of audio today.

5 THE COURT: All right.

6 MR. MORRIS: That's fine.

7 THE COURT: I hear you very well.

8 MR. MORRIS: Yeah.

9 THE COURT: So I think we're good right now. Thank
10 you.

11 THE WITNESS: Yeah. Thank you, Your Honor. I was
12 just checking.

13 THE COURT: Okay.

14 THE WITNESS: In response to your question, Mr.
15 Morris, yes, I have seen this before.

16 BY MR. MORRIS:

17 Q Okay. And can you -- did you form a view in doing the due
18 diligence as to the adequacy of this disclosure?

19 A Yes, I did.

20 Q Can you share your -- or share with Judge Jernigan the
21 Debtor's view as to the adequacy of this disclosure concerning
22 the litigation between Highland and Acis?

23 A With respect to the litigation between Highland and Acis,
24 or, really, between Acis, Highland, and Highland's principals
25 and Acis's principal, totally inadequate. The disclosure here

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1 is very high-level. And if there were no other litigation
2 going on, it might serve to suffice. It basically says, In
3 our business, because we invest in distressed loans, there's a
4 lot of litigation around distressed investments, and that's
5 what we have. And then it says, We've talked with the
6 investor about other things and we're -- we think that's
7 enough.

8 Q Is there anything in this portion or anywhere in the
9 offering memorandum that you're aware of that disclosed to
10 HarbourVest that in the weeks leading up to the investment
11 Highland was engaged in the fraudulent transfer of assets away
12 from Acis?

13 A No. And I apologize, because I think it's -- I've
14 conflated two provisions. This one only deals with the very
15 high-level nature of the business. It doesn't give any
16 indication that there's any material litigation going on
17 elsewhere with respect to Acis.

18 I believe there's another provision that says, We -- we
19 have talked to -- oh, here -- I'm sorry. It is here.
20 Shareholders have had an opportunity to discuss with Highland
21 to their satisfaction all litigation matters against Highland
22 and its affiliates unrelated to its distressed business.

23 That, in my opinion, is wholly inadequate.

24 Q Okay.

25 MR. MORRIS: And let's put up -- actually, let's just

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1 move on.

2 BY MR. MORRIS:

3 Q Let's go to the settlement itself.

4 MR. MORRIS: Can we put back up Demonstrative Exhibit
5 #3?

6 BY MR. MORRIS:

7 Q Mr. Seery, can you see that?

8 A Yes, I can.

9 Q Does this generally describe the net economic recovery of
10 the HarbourVest settlement based on estimated recoveries for
11 general unsecured creditors as of November 2020?

12 A As of November 2020, it does. And you alluded to this in
13 your opening, but to be clear, the numbers have shifted.
14 Costs have increased. The -- so the -- effectively, the
15 numerator, in terms of distributable value that we estimate,
16 is lower. And settlements, the denominator, have also
17 increased. So the claims against the estate that have been
18 recognized have increased. And that, that probably takes it
19 down closer, in our view, to about seventy cents distribution,
20 a number closer to nine to ten million, maybe a little bit
21 less.

22 However, there's also some additional value that we -- we
23 believe we will recover directly. There are north of \$150
24 million of intercompany notes owed by Dondero entities to
25 Highland. A number of those notes are demand notes, and we've

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1 already made demand. We'll be initiating actions next week.
2 So those are -- those value, we believe, we'll recover
3 directly from Mr. Dondero and from related entities.

4 To the extent those related entities don't have value, we
5 feel very strongly about our ability to pierce the veil and
6 reach in to Mr. Dondero. And then his assets, either his
7 personal assets or the assets that he claims are in trusts.

8 In addition, there are a significant amount of notes that
9 were extended in two -- I believe around 2017, for no
10 consideration. Those notes were demand notes, I believe, and
11 then extended it 30 years. So they have 2047 maturities.
12 Those were probably going to have to be subject to fraudulent
13 conveyance type actions or -- or some sort of sale at a very
14 discounted value because third parties wouldn't want long-
15 dated notes with Mr. Dondero as the counterparty for very much
16 money.

17 Those -- they defaulted on some of those parties, so we
18 effectively turned them into demand notes. We've accelerated,
19 and we'll be bringing actions against those entities next week
20 as well.

21 So I think (garbled) have come up, so I apologize. One
22 way of saying I think the sixteen and a half is a bit high
23 right now, based upon what we know, but the value is going to
24 be higher than our estimate a couple of weeks ago because we
25 do believe we'll be able to recover on the notes.

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1 One additional caveat, just to be fully transparent here.
2 This summary with the 16.8 doesn't include the subordinated
3 piece of this -- of this claim and our resolution. That --
4 recovery of that piece will be dependent upon the success of
5 litigations.

6 In order for the subordinated piece to get paid, all
7 general unsecured claims in Class -- Classes 7 and 8 will have
8 to be paid in full. And then -- and then the subordinated
9 class in Class 9, which we believe UBS will have a piece of,
10 and HarbourVest will have a piece of by this settlement, those
11 will be able to recover, and those will be based upon other
12 claims of action against -- primarily against related parties.

13 Q And then that last point, is that what's reflected in
14 Footnote 3 on this page?

15 A That's correct, yes.

16 Q Okay. And just for the record, there's a reduction in
17 value of \$22-1/2 million. Do you see that?

18 A Yes.

19 Q And can you just explain to the Court what that is and how
20 that value was arrived at?

21 A Yes. I may be getting slightly ahead of you, Mr. Morris.
22 But to give the Court a reflection of the transaction -- and
23 we can go into the details in a moment -- ultimately, the
24 transaction we structured we think is very fair both
25 economically to the Debtor, but there -- there is some

1 complexity to it to satisfy some of HarbourVest's concerns
2 that they be able to effectively rescind the transaction, at
3 least from an optical perspective. Value was important, but
4 optics were as well. The twenty-two and a half is the current
5 -- actually, the November value of HCL -- the HarbourVest
6 interests in HCLOF. And that's based upon Highland's
7 evaluation of those interests.

8 So we do believe that that is a fair value as of that
9 date. It has not gone done. It hasn't gone up explosively,
10 either, but it hasn't gone down. We think that's good, real
11 value. That value is in the Acis CLOs, the equity in those
12 CLOs, which is 2 through 6, that we -- we will be working with
13 the HCLOF folks to get Mr. Terry to monetize those assets and
14 those longer-dated CLOs.

15 In addition, I think it's 85 percent of the equity in Acis
16 7 -- Acis 7 is managed by Highland -- that is also beyond its
17 reinvestment period. And in talking to the directors -- and
18 they're new directors, and I'll get to that in a minute, for
19 HCLOF -- they'll seek to push Highland, which is the
20 reorganized Highland, to monetize that asset, with due regard
21 to fair value.

22 In addition, Harbour -- HCLOF owned a significant amount
23 of the preferred or equity pieces, if you will, in the
24 Highland CLO, 1.0 CLOs. As we've talked about, those are not
25 really CLOs. Those are effectively closed-end funds with

1 illiquid assets, primarily illiquid assets in them. We've had
2 some dispute in front of the Court about selling the liquid
3 assets in them, which we can go into it another time. Those
4 are being liquidated in the market at fair value.

5 But HCLOF also is a significant holder of those preferred
6 shares, and those directors would -- have indicated to me that
7 they would like to see those interests also monetized.

8 Q All right. Let's shift gears for a moment to talk about
9 the diligence that the Debtor did before entering into this
10 agreement. Can you just describe for the Court generally the
11 diligence that was undertaken at your direction?

12 A Well, when we first received the reply to our objection,
13 we dug into that reply and the specifics in it very
14 aggressively. So we reviewed all of the underlying documents
15 related to the original transaction. We discussed with
16 counsel the legal basis for the HarbourVest claims. We
17 interviewed our own HCMLP employees who were involved in the
18 transaction and tested their recollection, specifically around
19 who dealt with HarbourVest, who had the discussions with
20 HarbourVest, what was disclosed to HarbourVest with respect to
21 the Terry dispute and the Acis litigation.

22 We also had done, as I think the Court is well aware from
23 prior 9019 testimony, extensive work around the transfers and
24 the issues related to Acis. So we were familiar with their
25 impact on HCLOF.

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1 We also did extensive work valuing the remaining HCLOF
2 interests to get a good feel of not only how much HarbourVest
3 originally invested, but how much they actually lost in this
4 transaction. And as I said, their original investment was
5 around, in total, in two tranches, about \$80 million, of which
6 they got about \$5 million back, and they've lost \$22 million.
7 So it -- I mean, remaining with \$22 million. So they've lost,
8 you know, in excess of \$50 million.

9 Q Do you recall whether the Debtor reviewed and analyzed all
10 of the documents that were cited in HarbourVest's response to
11 the Debtor's objection to the HarbourVest proofs of claim?

12 A Yeah. I think -- I forget, to be honest, which -- exactly
13 what documents were in there. But we went through their
14 objection with a fine-toothed comb, not only with respect to
15 the issues related to the Acis case, but also their references
16 to Guernsey law, other U.S. law, any of the documents between
17 the parties. And obviously, as I mentioned before, the
18 offering memorandum.

19 MR. MORRIS: Your Honor, I would just note for the
20 record that Debtor's Exhibits I through X are all of the
21 documents that are cited in HarbourVest's response to the
22 Debtor's objection to the HarbourVest proofs of claim, and
23 those are the documents that Mr. Seery just referred to.

24 THE COURT: All right.

25 MR. MORRIS: Just, they're in evidence now, and I

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1 just wanted the Court to understand why they're in evidence.

2 THE COURT: Okay. Thank you.

3 MR. MORRIS: You're welcome.

4 BY MR. MORRIS:

5 Q Let's talk about the Debtor and whether or not it had or
6 has any viable defenses. Did the Debtor form any views as to
7 whether or not it had any defenses to the HarbourVest claims?

8 A Yes, we did.

9 Q Can you describe for the Court the defenses that were
10 reviewed and analyzed by the Debtor?

11 A Yeah. I think we -- we had very significant defenses.
12 So, first and foremost, with respect to the original proof of
13 claim, as I mentioned earlier, it alluded to the expenses and
14 the overcharge. And I think with respect to the 15 million of
15 fees that were charged to HCLOF by Highland, we didn't have a
16 lot of defenses to that claim.

17 It's pretty clear, by any fair view of the Acis case, that
18 HCLOF, as the investor in the Acis CLOs and the Highland CLOs,
19 had no real responsibility for fighting with Acis and Josh
20 Terry and shouldn't have been charged those fees. I don't --
21 I don't think there's a legitimate investor that would
22 actually think that that was an appropriate amount to be
23 charged to a fund.

24 However, the claim was not as broad -- the proof of claim
25 was not as fulsome in terms of discussing and only vaguely

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1 referred to other damages. So we did -- we did, as a
2 threshold matter, think about whether we could argue that it
3 was time-barred because they had not met their obligations to
4 fully disclose under the proof of claim.

5 Secondly, we considered the defenses to the overall claim
6 of fraudulent inducement. Our perspective was that if we
7 could stop the claim of fraudulent inducement, the damages
8 would likely be limited to the 15 and maybe some -- some other
9 damages. With respect to the 15, again, the problem that we
10 had when we got past -- past motions for summary judgment is
11 the factual predicate for our defense was going to be that we
12 divulged these things to HarbourVest and that they did not
13 reasonably -- it was -- reasonably rely on some failure to
14 divulge because they're a sophisticated investor.

15 The problem with that defense is that our witnesses, which
16 really would have primarily been Mr. Dondero and Mr.
17 Ellington, and one other employee who runs the CLO business,
18 Mr. Covitz, would not be pretty good. They've been -- two of
19 them have been in front of this Court and they're not viewed
20 favorably and their testimony would be challenged and
21 potentially suspect.

22 So that gave us a real focus on trying to make sure that
23 we could, if we had to litigate, that we would litigate around
24 the fraudulent inducement.

25 As I said, reasonable reliance, what was disclosed, lack

1 of digging into the public record, because you don't have to
2 go far on Google to find "fraud" within two words of
3 "Highland," and the tremendous, you know, litigious nature of
4 Highland. You know, even at that point, when this investment
5 was made, aside from Mr. Terry's arbitration, which by that
6 point, at least by the time (inaudible) was public, there was,
7 you know, significant public disclosure around the Credit
8 Strat and the litigation, the Crusader litigation, the UBS
9 litigation, the, gosh knows, the Daugherty litigation.

10 So our defense was going to be that you should have
11 figured this out, you're a sophisticated investor, and you
12 should have been able to figure out that there was significant
13 risk that, with respect to Mr. Terry, that Mr. Dondero would
14 not stop litigating and that those costs would put significant
15 risk on the investment.

16 The problem with that, as I mentioned earlier, is that the
17 OM is wholly deficient. If you have a typical risk factor in
18 the offering memorandum, you would have disclosed that there
19 was a litigation with Mr. Terry, a former partner in the
20 business, and that the Debtor had no intention of settling it.
21 There was no intention of settling. That litigation would go
22 on. It could go on for years and it could result in
23 bankruptcy or attachments and other risks to the business, and
24 that the investor should be fully aware that the Offeror does
25 not intend to be involved in any -- or the manager, in any

1 settlement with Mr. Terry, and the fact it undermined the
2 investment. That wasn't there.

3 But that was our preliminary focus, to try to stop fraud
4 in the inducement. And then we -- we had specific facts
5 related to that. You know, once they knew about the
6 bankruptcy in HarbourVest of -- I'm sorry, of Acis,
7 HarbourVest made a second funding, which was there was a -- it
8 was an initial \$75 million draw, and then a second, I believe,
9 about a \$5 million draw, which was in -- I believe in
10 February. And they made it without -- without objection, and
11 that was after the commencement of the bankruptcy.

12 In addition, they were -- they were active in the
13 bankruptcy, so the -- some of the things that happened in the
14 bankruptcy, there were many opportunities to settle that case,
15 from our examination, all of which were turned down to -- by
16 Mr. Dondero. But you don't see HarbourVest pounding the table
17 to settle, either, either with respect to the Oaktree
18 transaction or any other transaction.

19 Now, HarbourVest's defense to that is, well, we were
20 taking advice and all of our information from Highland, and we
21 were getting that information directly from senior folks at
22 Highland why -- what the value was and why we shouldn't do
23 those things. We thought that that would mitigate some of the
24 arguments that -- some of the damages that we might have, I'm
25 sorry, if we -- if we lost.

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1 But the focus at that point, you know, our legal strategy,
2 was can we stop HarbourVest at the very forefront to say,
3 You've got to come into the factual realm and get out of the
4 fraud in the inducement realm. And then the defenses and the
5 exculpations and the liability limitations in the documents
6 would also come into play.

7 So that -- those are some of the defenses that we focused
8 on and our analytical thinking around them.

9 Q So, if the Debtor had viable defenses, why is it settling?
10 A Well, this is a significant claim. And we -- we looked at
11 it with respect to both the impact on the case, but, really,
12 the merits of the claim.

13 As I said, there's really little dispute that the legal
14 fees should not have been charged to HarbourVest. We think
15 based upon the testimony in Acis, the suspect credibility of
16 those who would have been our witnesses, and the experience in
17 Acis that the Court has had in terms of the completely hell-
18 bent on litigation, it would be hard for anyone to justifiably
19 defend those fees being charged. So, as an initial matter, we
20 had exposure there.

21 In addition, if HarbourVest got by our defense of -- was
22 able, for example, to claim fraud in the inducement, then we
23 were open to significant damages.

24 We really didn't put much value, frankly, on the RICO part
25 of it. We think that that's waved around often to show treble

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1 damages. Although in this case certainly somebody could lay
2 out the predicate acts and put forth a RICO-type argument, we
3 just didn't think that that had real merit in this commercial
4 dispute, even with a fraud claim.

5 But even without the trebling of the damages, there's no
6 dispute that HarbourVest lost more than \$50 million in this
7 investment. You know, we -- we thought about that risk as
8 well.

9 In addition, because the case would really be fact-based,
10 even if we had a high degree of confidence based upon our
11 discussions with our employees and the factual testimony, it
12 was going to be expensive to litigate this case, and time-
13 consuming.

14 And so we looked at the economic value, the potential
15 risks, and the actual value that we were giving up, and found
16 this to be an extremely, extremely reasonable settlement.

17 Importantly, and I think what drove it, you -- one of --
18 one of the things that drove it is another one of our defenses
19 on why, notwithstanding their -- what they held out as
20 meritorious claims, I don't think HarbourVest really wanted to
21 publicly litigate this claim. And we were aggressive in our
22 discussions with HarbourVest of how we would litigate it,
23 which would be quite publicly.

24 Now, that may or may not be fair, but that does put risk
25 on the counterparty. And so I think that helped drive the

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1 settlement.

2 In addition, the structure of the settlement we think is
3 extremely favorable to the Debtor and to the estate because,
4 rather than taking the full claim and putting it into a senior
5 unsecured position, we have bifurcated it. We did think about
6 whether this was a claim that could be subordinated under 510.
7 There won't be any arguments, I would be surprised if there's
8 arguments today that we didn't actually give to the Highland
9 employees who have given them to Mr. Dondero's respective
10 counsel.

11 We did structure it in a way that we thought gave
12 HarbourVest the opportunity to effectively claim a rescission,
13 even though that's not really what it is, and then be able to
14 claim that their recovery is based on the bankruptcy, which it
15 is, but not really dilute all the other stakeholders in the
16 case.

17 (Pause.)

18 THE COURT: Mr. Morris? Anything else?

19 MR. MORRIS: I can hear you, Your Honor.

20 THE COURT: Okay.

21 MR. MORRIS: I can hear you.

22 THE COURT: Okay. Now can you --

23 MR. MORRIS: I got cut off from Mr. Seery for a
24 moment.

25 THE COURT: Okay.

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1 BY MR. MORRIS:

2 Q Okay. I appreciate that. Are you done giving the
3 Debtor's basis for entering into this settlement, Mr. Seery,
4 if you can hear me?

5 A I think so, but I think as the Court has probably seen, I
6 can go on.

7 Q Yes.

8 A So I will try to be -- I'll try to be more concise. But
9 this was a -- this was a difficult settlement. We felt good
10 about our defenses. Felt that we could -- we could try them.
11 But it would be extremely expensive, time-consuming, and there
12 would be a lot of risk. And settling at a level which we
13 believe is actually below the damages that were clearly caused
14 only by the fees was a -- was a -- is a -- is a very
15 reasonable settlement.

16 Q Okay. Let's just talk about the process by which we got
17 to the settlement. Do you recall generally when the
18 settlement negotiations have -- were commenced?

19 A I believe it was -- was late summer, early -- early fall.

20 Q Okay. Before I move on, I just want to go back to the
21 Acis matter that you were talking about, one last issue. Do
22 you know how, if at all, the injunction that was entered in
23 the Acis bankruptcy impacted or related to the HarbourVest
24 claims?

25 A Yeah. I -- yes, I do. And I believe it -- it did. I

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1 think there's an argument, and we analyzed it thoroughly, that
2 the injunction effectively caused a lot of the damages.
3 Because if you look at the values of the equity that
4 HarbourVest had, the -- and HCLOF had in the CLOs, it went
5 down dramatically after the Trustee in the Acis case took over
6 and then subsequently, when the case was reorganized and Mr.
7 Terry took over, you know, with Brigade as the sub-advisor.

8 Now, that would -- you know, we would -- we could
9 certainly attempt to throw, in our defense, the causation at
10 Mr. Terry's feet or at Mr. Phelan's feet. HarbourVest's
11 retort is that none of this would have occurred but for the
12 burn-it-down litigation that Mr. Dondero engaged in with
13 Highland.

14 In addition, in Mr. Terry's defense, you know, he did try
15 multiple times with HCLOF, tried to petition, if you will, the
16 HCLOF entity to -- and directors, former directors, to reset
17 the CLOs to make them more economically viable, based upon the
18 current level of asset returns versus the debt costs in the
19 CLOs. And that was rejected by the HCLOF and the Debtor as
20 the controlling party of HCLOF. So, we thought about those
21 risks.

22 You know, similarly, the economic values in Acis 7 went
23 down pretty significantly from that date as well. So I think
24 there's -- there are some defenses, but that's really Mr.
25 Terry's issue, not our issue. So we thought about those

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1 issues, we analyzed them, and we certainly did all the work
2 around month-to-month reductions in NAVs and how different
3 events in the Acis case might have -- might have caused those
4 and was that some sort of break from the original
5 transgression that HarbourVest claims, which was the
6 fraudulent inducement.

7 Q Do you recall that in November HarbourVest's motion under
8 3018 was scheduled to be heard?

9 A Yes.

10 Q And can you just tell the Court your understanding of what
11 the 3018 motion was about?

12 A Well, the 3018 motion was going to be on voting. And we
13 took the view that it really was not -- it shouldn't have been
14 that big an issue and HarbourVest should have been content
15 with just taking their actual losses of roughly a \$50-\$60
16 million claim for voting purposes and then we would move on.

17 HarbourVest was very insistent that they have a \$300
18 million claim, because they took the position -- and with
19 extensive documentation; not only the pleadings they filed,
20 but also detailed decks that were prepared by their counsel,
21 which they had presented to us on the merits of their claim --
22 that they were going to litigate for -- the 3018 and for the
23 full \$300 million value.

24 And that became the genesis, if you will, of the
25 negotiations to settle.

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1 So, we started talking about the 3018. It was very
2 contentious. My apologies to Ms. Weisgerber and her counsel,
3 her partners, because it was a significant and contentious
4 negotiating call. But the reasons for that I think were that
5 -- their insistence on litigating the 3018 and our view that
6 this was just, you know, another -- another of a series of
7 delays and costs in this case that we really were hoping to
8 avoid.

9 That led to Mr. Pugatch and I stepping away from counsel,
10 no offense to counsel, you know, ours and his, to begin
11 negotiations around the potential for a settlement. First, it
12 started with a 3018, and then, you know, argued that we would,
13 if we got past the 3018, we were going to litigate this,
14 because we effectively had -- thought we could get everyone
15 else done at -- in and around that time. And I think we were
16 also probably a little bit optimistic about UBS at that time
17 and the mediation, which subsequently we have settled. But
18 that was the genesis of those settlements.

19 Q And how did the structure, how did the Debtor and
20 HarbourVest derive at the structure whereby there is a general
21 unsecured claim, there is a subordinated piece, and there's
22 the takeback of the HCLOF interest?

23 A Well, as I outlined, we -- we aggressively set forth our
24 various defenses. Their position was that they -- they should
25 never have been in this transaction before. And they --

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1 HarbourVest is, in essence, a fund of funds, and they have
2 investors, and it certainly wouldn't be their, I'm sure, the
3 best-performing asset in their portfolio, to have made this
4 investment and lost \$50 million over this period of time. So
5 they felt strongly that they should never have been in this
6 investment, and but for the failure to disclose and the
7 improper disclosures, they would not have been in this
8 investment.

9 So, optically, getting out of it was important to them,
10 and that led to our idea and construction of a subordinated
11 claim and the transfer of the HCLOF interests to the estate.

12 Importantly, the HCLOF interests, as I mentioned, are --
13 the investments are in the Acis CLOs controlled by Acis and
14 Mr. Terry. The reorganized Acis. As well as the 1.0 CLOs and
15 the Acis 7.

16 So we were keenly focused on, if we were going to get that
17 interest, would we then have the majority control in HCLOF,
18 which we will, and would we be able to drive the recoveries,
19 as opposed to what Highland typically does in these
20 investments is use other people's money, drive down the value,
21 and then try to buy back the interest on the cheap.

22 Q Just in terms of timing, because I think there was a
23 suggestion in one of the openings that there was something
24 untoward about the timing here: At the time the liquidation
25 analysis was prepared on November 24th, had the Debtor reached

1 any agreement in principle with HarbourVest?

2 A If we had, it would have been reflected, so I don't -- I
3 don't think we were agreed by then. I don't recall the
4 specific dates, but if we had, it would have -- it would have
5 been reflected.

6 Q If I can refresh your recollection that the motion was
7 filed on December 24th, does that help form your understanding
8 or refresh your recollection that there was no agreement in
9 principle on November 24th?

10 A Yeah. Well, I'm quite sure there was no agreement in
11 principle or we would have reflected it minimally by a
12 footnote. There's -- there's no chance. It's a material
13 reduction in the claims pool that we were previously telling
14 people that, at least for purposes of distribution, like UBS
15 and a couple others we said we thought we would get to zero
16 on. So we didn't calculate in that amount. So I'm quite sure
17 we didn't have a deal when we filed the disclosure statement.

18 In terms of the timing, anyone who's done this business
19 for any degree of time knows that the crucible of bankruptcy
20 brings people to the settlement when they see something
21 happening in the case, and not before. I think HarbourVest
22 looked at our -- this is my supposition -- HarbourVest looked
23 at our plan, our ability to get this done, our settlement with
24 Redeemer, our settlement with Mr. Terry and Acis, and saw that
25 this plan was coming together, and if they didn't think about

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1 the settlement, they were going to think about not only the
2 risks that we laid forth for them with respect our defenses,
3 but also the opportunity to litigate with the Claimant Trustee
4 over a long period of time, which couldn't have been
5 particularly appetizing.

6 Q Can you describe for the Court the role played by the
7 independent board of Strand, the general partner of the
8 Debtor, in analyzing and participating in the approval
9 process?

10 A Yes. I think, as the Court is aware and I've testified
11 before, Mr. Russell Nelms and Mr. John Dubel are fellow
12 independent directors with me, appointed pursuant to the Court
13 order. They are kept abreast of every detail, and -- along
14 the way, not just in a summary form at the end. We have
15 reviewed and analyzed collectively each of the issues. Mr.
16 Dubel has extensive experience in these types of litigation
17 matters. Obviously, Mr. Nelms, from his -- both his practice
18 and his time on the bench, has a keen insight into how to
19 resolve and what the risks and benefits are from settling
20 litigation. So I consult them every step of the way.

21 Q And as part of this process, did the Debtor reach out to
22 the directors of HCLOF?

23 A Yes, we did. So, we reached out and we've had several
24 conversations on video chats with the directors. The
25 directors of HCLOF are two new gentlemen, Mr. Richard Boleat